

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.2250 of 2015 (O & M)

Date of Decision: September 24, 2015

Gulzar Singh & others

..... APPELLANTS

VERSUS

Pritam Singh (since deceased) through legal heirs & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

. . .

PRESENT: - Mr. S.K. Arora, Advocate, for the appellants.

Mr. Namit Gautam, Advocate, for the respondent –
caveators.

. . .

Jaspal Singh, J

1. Gulzar Singh, legal representative of Balkar Singh (defendant No.1), Mehar Singh, legal representative of Bara Singh (defendant No.2) and others have approached this Court through instant regular second appeal challenging the judgments & decrees passed by the courts below.

2. Pritam Singh (now deceased and represented by his legal heirs) instituted a suit for decree of possession of plot measuring 2 kanals

1 marla having an area of 165'.0" X 71'.6" consisting of 4 shops, 3 rooms, kitchen, verandah forming part of Rect. No.117, Killa No.19/1(3-11) marked as 'ABCD', as shown in red, green and yellow colours, in site plan, situated in Old Zira Road, Opposite New Grain Market, Ferozepur.

3. The suit was contested by the defendant(s). Defendant No.1 filed written statement stating that Banta Singh, Malook Singh and Mehal Singh were in possession of $\frac{1}{2}$ share out of land measuring 5 kanals 12 marlas comprised of Rect. No.117 Killa No.19/1 (3-11), 22/2/1 (2-1). Defendant Balkar Singh was in possession of $\frac{1}{3}^{\text{rd}}$ share of $\frac{1}{2}$ share in the said land. Banta Singh, Bagicha Singh, Jita Singh and Balbir Singh were in possession of remaining $\frac{2}{3}^{\text{rd}}$ share in the said land for the last 35 years. Mutation No.15382 qua the land measuring 2 kanals 1 marla out of the land measuring 5 kanals 12 marlas was illegal and entered at his and the possession was never delivered to Pritam Singh. They filed civil suit for declaration that they had become owners by way of adverse possession. His possession over the land measuring 5 kanals 12 marlas was admitted by all the defendants in that lis. The suit was dismissed by the civil court. Both the parties went in appeal against that decision. Appeal filed by him was dismissed, whereas appeal filed by Pritam Singh was partly allowed. Thereafter, they challenged the findings of trial court as well as first appellate court before this court and their regular second appeal is still pending in which the question of title is subjudice. Defendant further pleaded that mutation does not confer any title and possession of any part of the land was never delivered to the plaintiff.

Plaintiff has no right, title or interest on any part of land. Plaintiff has not challenged the judgment of first appellate court. Infact, Balkar Singh transferred 8 marlas of land out of Rect. No.115 Killa No.19/2/1/3 vide sale deed dated July 21, 1997 where he raised construction. Niranjana Kaur had transferred 4 marlas of land comprised of Rect. No.117 Killa No.19/2/1/2 to Kashmir Singh and Jai Singh vide sale deed dated December 3, 2001 where the vendees raised construction.

4. Defendant Nos.2(a) and 3 to 8 filed separate written statements by taking similar pleas as taken by defendant No.1. Replication(s) also filed by the plaintiff(s). From the pleading of parties, the following issues were framed:-

1. Whether the plaintiff is owner of the suit land? OPP
2. Whether the plaintiff is entitled to possession as prayed for? OPP
3. Whether this suit is within limitation? OPP
4. Whether this suit is properly valued for the purpose of court fee and jurisdiction? OPD
5. Whether the suit is liable to be stayed u/s 10 CPC? OPD
6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
7. Relief.

5. Parties led their evidence. After hearing learned counsel for the parties, perusing the record, suit of the plaintiff(s) has been decreed vide judgment & decree dated October 12, 2011 passed by the lower court.

6. Aggrieved defendant(s) went up in appeal before the lower appellate court but the same was dismissed vide judgment & decree dated February 24, 2015 by the lower appellate court while affirming the findings recorded by the lower court.

7. Now, the defendant(s) have come up in regular second appeal challenging the judgments and decrees passed by the courts below.

8. While assailing the findings, especially on Issue Nos.1 to 3, it has been argued with vehemence by learned counsel for the appellant that both the courts below have rendered erroneous findings. Infact, the appellants have become owners of the land measuring 5 kanals 12 marlas including suit land by lapse of time. It is evident from perusal of judgment dated October 12, 2011 passed by the Civil Judge (Junior Division), Ferozepur that in view of judgment passed by Mr. Gurbir Singh, the then civil Judge (Junior Division), Ferozepur, Ex.P4 only defendants have been held to be in possession of the suit land measuring 2 kanals 1 marla as tenants of said will under the ownership of Pritam Singh, plaintiff. Thus, all these issues are decided in favour of plaintiff and against the defendants. While rendering these findings, learned lower appellate court totally over-looked judgment dated April 29, 2004 (Ex.P6) wherein the appellants were held to be in unauthorised possession over the suit land since 1988.

9. It has further been contended by learned counsel for the appellant that though a specific issue was framed by the trial court regarding limitation but no findings have been returned by both the

courts below. It is a categoric stand of the appellants that suit of the plaintiff is barred by law of limitation as he has failed to claim possession of the suit property within 12 years of the alleged allotment. The land in dispute is alleged to have been allotted to the plaintiff vide order dated November 19, 1982 (Ex.D3) but the suit was filed in the year 2005 that too after expiry of approximately 17 years which is beyond limitation as the suit can be filed only within a period of 12 years under Article 65 of the Limitation Act.

10. Lastly, it has been argued by learned counsel for the appellants that first appellate court has also committed a serious error while dismissing an application moved by the appellants under Order 41 Rule 27 CPC seeking production of additional evidence. The said application has been dismissed by the first appellate court simply on the ground that it has been filed just to prolong the proceedings and disposal of the appeal. Infact, the document(s) sought to be produced i.e. copy of jamabandi is essential for the proper and effective adjudication of the matter in controversy and goes to the root of the matter. Thus, the order whereby the aforesaid application has been dismissed by the first appellate court is also liable to be set aside. Since the findings recorded by both the courts below and the judgment & decrees are absolutely against the evidence available on file and the legal proposition applicable to the facts & circumstances of the case in hand, the same are not sustainable and are liable to be set aside by way of acceptance of the instant appeal.

11. On the other hand, learned counsel for the respondents has supported the judgments & decrees passed by both the courts below and further that the application moved by the appellant – plaintiff before lower appellate court under Order 41 Rule 27 CPC has been rightly dismissed. The plaintiff – respondent being the owner of the property in suit measuring 2 kanals 1 marla on the basis of allotment is legally entitled to its possession. The suit is well within time, especially in the circumstances that the defendants – appellants have nowhere claimed themselves to be owner of the suit property by way of adverse possession or otherwise. The right of the plaintiff – respondent could have only been scuttled down by the appellants – defendants for possession by way of establishing their ownership and possession over the suit property which they have miserably failed to establish. The judgments and decrees passed by both the courts below being absolutely in consonance with evidence available on file and settled canons of law do not call for any interference by this Court. The appeal being devoid of merits deserves to be dismissed with special costs.

12. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and have scrutinized the documents available on file minutely.

13. It is amply proved on record that land in dispute was allotted to plaintiff Pritam Singh on November 19, 1982 alongwith some other land which is in illegal possession of defendants – appellants. Even on the basis thereof, mutation No.15382 (Ex.D4) was also sanctioned. It is an undisputed fact that the appellant Nos.1 to 8 previously filed civil

suit No.299-1 of 7.10.1994/18.1.2001 captioned as 'Balkar Singh versus State of Punjab' which was partly decreed vide judgment & decree dated January 30, 2002 (Ex.P4) by categorically observing that the plaintiffs (now appellants) are in possession of the land in suit as tenants and the Central Government is the owner of suit land. The said judgment was challenged before lower appellate court and the learned Additional District Judge, Ferozepur, while dismissing the appeal, modified the judgment of lower court by holding that the plaintiffs (now appellants) in unauthorised occupation of the suit land. Not only this, judgment passed by the lower appellate court Ex.P7 was further challenged before this Court but that appeal was also dismissed vide judgment dated October 31, 2006 (Ex.P8) delivered in Regular Second Appeal No.2565 of 2005 by categorically observing that the plaintiffs are in unauthorised possession of the suit land. However, their possession is not adverse which could ripen into ownership. So, there is cogent and convincing evidence brought on record by the plaintiff – respondent Pritam Singh that he is owner of the suit property on the basis of the allotment order dated November 19, 1982 (Ex.D3) and further that the land in suit is in unauthorised possession of the present appellants – defendants. The suit of the plaintiff is also well within limitation as the appellants – defendants are unable to establish that their possession is adverse and hostile to the knowledge of the plaintiff – respondent.

14. As far as dismissal of application under Order 41 Rule 27 CPC by lower appellate court is concerned, the said order also does not call for any interference by this Court. The documents sought to be

produced by way of additional evidence are not essential for proper adjudication of the matter in controversy. Case of the plaintiff – respondent is based upon documentary evidence from which it stands conclusively proved that plaintiff – respondent Pritam Singh is owner of the property in suit and he is legally entitled to take its possession.

15. In the light of what has been discussed above, this Court is of the considered view that there is no infirmity, illegally and impropriety in judgments and decrees rendered by the courts below, and as such, there is no cause to meddle with the same. There is no question of law what to say any substantial question of law in the instant appeal, rather it can be said that instant appeal is devoid of merits. Accordingly, the same is dismissed, however, leaving the parties to bear their costs.

September 24, 2015
avin

(Jaspal Singh)
Judge