

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Regular Second Appeal No.2425 of 2015 (O&M)
Date of decision: 28.05.2015**

Khem Chand

.....Appellant

Versus

Vishnu @ Behari

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rohiteshwar Singh, Advocate,
for the appellant.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment of reversal dated 10.04.2015 passed by the Additional District Judge, Rewari, whereby appeal filed by the defendant-respondent against the judgment and decree dated 08.04.2013 passed by the Civil Judge (Junior Division), Rewari, has been allowed and suit of the plaintiff has been dismissed.

Khem Chand-plaintiff (appellant herein) claims himself to be owner in possession of the land/property measuring 5 Marlas, comprised in Khewat No. 790, Khatoni No. 853, Khasra No.407, situated in village Nandrapur Base. The defendant, whose property is situated adjacent to the plaintiff, was carrying out illegal construction over some part of plaintiff's land without getting it demarcated. The defendant being head strong person, wanted to grab the land of plaintiff. Consequently, the plaintiff-appellant filed a suit for permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiff and

grabbing his property illegally and forcibly.

Upon notice, the defendant-respondent filed written statement and controverted the allegations made by the plaintiff in his suit. It was submitted that during consolidation proceedings, Khasra No.407 came to the share of one Chander son of Ramrik. Thereafter, his legal heirs namely Madhu Ram, Khem Chand and Laxmi Narain inherited this property, but later on, they relinquished their share in favour of Mamraj on 14.10.1993. In turn, they took a 'Dharamshala' from Mamraj. Consequent upon this oral exchange, the parties remained owners in possession of their respective exchanged properties. As per defendant, after 1993, the plaintiff had no right, title or interest in the suit property.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is owner in possession of the suit property detailed in para no.1 of the plaint? OPP
2. Whether the defendant being owner of the adjacent property is raising construction to grab the portion of the plaintiff property forcibly and illegally? OPP
3. Whether the plaintiff has no locus standi nor any cause of action to file the present suit as the suit property was received by the defendant in oral exchange? OPD
4. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit. The defendant-respondent was permanent restrained from interfering in the peaceful possession of the plaintiff with respect to Khasra No.407.

The lower appellate Court reversed the findings of the trial Court

and accepted the appeal. The plaintiff-appellant filed a suit for permanent injunction. In the alternative, relief of mandatory injunction was sought to the effect that if, any construction was raised by the defendant during the pendency of the suit, then the suit property be restored to its original position. The lower appellate Court observed that the plaintiff-appellant himself was not sure as to whether any construction had been raised by the defendant prior to filing of the suit or thereafter. No evidence was led by the plaintiff-appellant to show the existing position of the suit property, as it was existed prior to filing of the suit and the new construction alleged to have been raised by the defendant during the pendency of the suit. The report of the Local Commissioner (Ex.P1) only showed the existing position of the suit property. The property comprised of Khasra No.404 adjoins Khasra No.407. As per the report of Local Commissioner, a boundary wall existed around the property comprising of Khasra No.404 and 407 and entrance of the said Khasra numbers was from the gate opening in the property comprising of Khasra No.404. This fact was evident from the site plans submitted by both the parties. The plaintiff-appellant did not lead any evidence to show that the boundary wall, tin shed and room existing over the suit property, comprising of Khasra No.407, had been raised by him from his own sources. Om Parkash (PW-1) had proved the the site plan. Kishan Singh (PW-2) had admitted the possession of Vishnu @ Behari-defendant (respondent) over the suit property. In his cross-examination, this witness had stated that there existed a boundary wall and gate around the suit property. He admitted that the defendant-respondent had been residing in the suit property. He had further stated that Chander had four sons namely Madu Ram, Mam Raj, Khem Chand and Laxmi Narain. Mam Raj was given in adoption and Chander had died in the year 1997. Hence, the revenue

entry showing Chander to be owner in possession of the suit property i.e. Khasra No.407, was held to be wrong and could not be relied upon. During his cross-examination, Khem Chand-plaintiff had admitted that construction had been raised by the defendant. On the basis of this evidence, it was held that the plaintiff-appellant never came into exclusive possession of any part of the suit property at any point of time. A suit for injunction was not maintainable when the plaintiff-appellant could not prove his possession over the suit property. He had also failed to prove his exclusive title over the suit property after the death of his father.

Defendant-respondent is son of Mam Raj, one of the brothers of Khem Chand and in his written statement, the defendant-respondent took a stand that after the consolidation proceedings, Khasra No.407 came to the share of Chander son of Ramrik. Thereafter, his legal heirs namely Madhu Ram, Khem Chand and Laxmi Narain inherited the same and later on, they relinquished their share in favour of Mamraj on 14.10.1993. In lieu of this property, they had taken a 'Dharamshala' from Mamraj. Since then the parties continued to be owners in possession of their respective exchanged properties. It was held that even if the alleged agreement of exchange (Ex.DW2/B) is ignored and titled of the defendant-respondent with regard to the suit property was found to be defective, even then the plaintiff-appellant would not be entitled to the relief of injunction as he could not prove his exclusive ownership or possession over any part of the suit property. Rather, in his cross-examination, the plaintiff-appellant, had admitted the possession of defendant-respondent over the suit property. With these observations, the lower appellate Court dismissed the suit of the plaintiff-appellant.

appellate Court, this Court is of the view that suit of the plaintiff-appellant has been rightly dismissed as he could not prove his exclusive possession over the suit property by leading cogent and convincing evidence. Moreover, in his cross-examination, he himself had admitted the possession of defendant-respondent over the property in dispute. No illegality, much less perversity, has been found in the impugned judgment warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

28.05.2015
ajp

(RITU BAHRI)
JUDGE