

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.2899 of 2015 (O & M)

Date of Decision: September 28, 2015

Kewal Singh

..... APPELLANT

VERSUS

PWD Kapurthala & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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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?

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PRESENT: - Mr. Hitesh Kaplish, Advocate, for the appellant.

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Jaspal Singh, J

CM No.7042-C of 2015

For reasons stated in the application, delay of 5 days in filing the appeal is condoned.

Application is allowed.

RSA No.2899 of 2015

1. The instant regular second appeal has been preferred by plaintiff – Kewal Singh challenging judgment & decree dated October 15, 2014 passed by the lower appellate court whereby the appeal filed by him

against judgment & decree dated January 23, 2014 dismissing his suit, has been dismissed and findings recorded by the lower court affirmed.

2. The brief facts of the case are that plaintiff filed the suit for permanent injunction restraining the defendants, their agents, attorneys, employees, servants etc. and/or anybody else acting for and on their behalf from forcibly dispossessing him from the suit property as detailed in the head note of the plaint. As per the plaintiff, he alongwith his brothers Bakhtawar Singh, Mohinder Singh, Gurmail Singh and Kishan Singh are in peaceful possession of the suit property through their ancestors for the last about 100 years. Originally, the property was in the ownership of Maharaja Kapurthala. ₹ 50,000/- were spent by his father Kartar Singh and his brothers from their own pocket for development and improvement of land and ₹ 10 lac for raising construction in the said land, whereas previously, the land in question was just a pond, which otherwise is the ownership of Provincial Government. The names of father of plaintiff and his brothers, appeared in the record upto the year 1983-84. But subsequent thereto, no record was maintained/prepared as per the actual and factual position at the spot. As such, the entries if any are wrong. The plaintiff and his brothers are still in possession of the suit property and are residing there. They also got installed the electric connection and also holding ration cards. Previously, they have filed a suit titled as 'Kewal Singh Vs. Harjinder Singh' which is pending at Phagwara regarding the suit property. In that case, a local commission was appointed to demarcate the suit property and Kanungo reported the possession of the plaintiff and his brothers. The parties were directed to maintain status quo regarding the said suit land. The Collector, Phagwara issued a notice under Sections 4 & 7 of Punjab Public Premises and Land Eviction and Recovery Act to the plaintiff and subsequent thereto,

an ejectment application was also filed by Tehsildar, Phagwara against the plaintiff in the court of Collector which was allowed but plaintiff preferred revision against that order passed by Collector, Phagwara. The respondents – defendants are bent upon to take forcible possession of the suit land and to change its nature. They are also trying to raise construction thereon, but the respondents – defendants have no legal right as the plaintiff and his brothers are in peaceful possession of the suit property since the time of their ancestors. When the defendants did not desist from their illegal design, the plaintiff was constrained to knock the doors of civil court.

3. Upon notice, defendants resisted the suit. They filed written statement raising preliminary submissions that jurisdiction of the court is barred under the Punjab Public Premises and Land (Eviction and Recovery) Act, 1973; instant suit is not maintainable; bad for non-compliance of order 27 CPC; suit is not competent for want of notice under Section 80 CPC; and that, the plaintiff has no locus-standi or cause of action to file the present suit as well as he is estopped by his act & conduct. On merits, it has been alleged by the defendants that State of Punjab is owner and in possession of the property in suit which is now in possession of defendants – PWD. Earlier, the property in dispute was in unauthorised and illegal possession of the plaintiff which was taken by the defendants on April 17, 1985. At present, the building of ITI has been constructed which is running at the spot. Rest of the allegations have been denied and the defendants prayed for dismissal of the suit.

4. From the pleadings of parties, the following issues were framed:-

1. Whether the plaintiff is in possession of suit property?
OPP

2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

3. Whether the suit is not maintainable? OPD

4. Relief.

5. In order to substantiate their claims, parties were afforded opportunities and they led oral as well as documentary evidence.

6. After hearing learned counsel for the parties and going through the record available, the suit of the plaintiff was dismissed by the lower court vide judgment & decree dated January 23, 2014 holding that the plaintiff has failed to prove on record his possession over the disputed property as alleged by him.

7. Plaintiff approached the lower appellate court against the aforesaid decision of lower court. However, the appeal filed by him has also been dismissed vide judgment & decree dated October 15, 2014 whereby the findings recorded by the lower court have been affirmed.

8. Now, the plaintiff has approached this court by way of instant regular second appeal challenging the judgments & decrees rendered by the courts below.

9. While assailing the impugned judgments and decrees, it has been argued with vehemence by learned counsel for the appellant that the same are against evidence available on record and the settled canons of law. Mis-appreciation of evidence has resulted in mis-carriage of justice. Infact, it is amply proved on record by way of oral as well as documentary evidence that property in dispute is in actual physical possession of the plaintiff and his brothers who have raised construction of a house and are residing therein. Ex.P1 to Ex.P4 are various electricity bills and copy of ration card (Ex.P5) which have been ignored and disbelieved by the courts below while

rendering findings with regard to possession over the property in dispute. Apart from it, there is also a report of PW-4, Hardeep Kumar, Kanungo which clearly proves and confirms the possession of the appellant over the suit property. The possession of the appellant is an established one since the time of his ancestors. Moreover, they cannot be dis-posessed from the suit property except in due course of law even if the defendants are in possession of the property in suit and they can only be dis-posessed in due process of law. As such, findings of the courts below on all the issues as well as the impugned judgments & decrees are not sustainable in the eyes of law and deserve to be set aside by way of acceptance of the instant appeal.

10. This Court has given an anxious thought to the aforesaid submissions of learned counsel for the appellant and have scanned the evidence available on record but find the same to be of no legal weight.

11. Undisputedly, State Government is owner of the property in dispute which was earlier occupied by the plaintiff and his brothers. Consequently, the defendants were constrained to have recourse to the provisions contained in the Act for plaintiff's ejectment and in pursuance thereof, a notice under Section 407 of the Act was issued directing the plaintiff and others to hand over the vacant possession of the property in dispute. When they did not accede to the notice, Tehsildar preferred a petition seeking eviction of the plaintiff and others which was allowed and in execution of the order passed by the Collector, defendants took the possession of the property in suit on April 17, 1985 vide Rapt No.572 dated April 17, 1985. Moreover, the copy of jamabandi Ex.P9 pertaining to the year 1983 which has been placed and proved on record by the appellant – plaintiff depicts the ownership of the provincial government though it

of suit land has been taken by the provincial government in execution of eviction order. After April 17, 1985, neither plaintiff nor his brother(s) can be termed to be in possession of the property. The defendants have also placed on record copy of jamabandi for the year 2008-09 Ex.D1 which clearly reflects provincial government to be owner in possession of the property in suit. In Remarks Columns thereof, it is found mentioned that vide Rapt No.817 dated December 18, 2009, suit property has been allotted to ITI, the PWD has raised construction of the building of ITI which is at present is being running at the spot. Moreover, admission is the best proof. The plaintiff while appearing in the witness box has clearly admitted that in the copy of jamabandi Ex.PW2/DB, the provincial government has been recorded as owner in possession of the suit land which is at present in possession of ITI. The presumption of truth is attached to the entries in the copies of jamabandi but there is no evidence to rebut the said presumption brought on record by the appellant – plaintiff.

12. Here, it would be pertinent to mention that Rapt No.572 dated April 17, 1985 vide which possession was taken by the defendants from the plaintiff and his brother(s), also bears the signatures of Harnam Kaur who is none else but mother of plaintiff as well as Kewal Singh, his father. The receipt showing payment of electricity charges or the ration card are not sufficient to meet the presumption attached to the copies of jamabandis under Section 44 of the Punjab Revenue Act, 1997 because the same are not in any way connected with the disputed property. Similarly, the report, if any, given by Hardeep Singh Kanungo is of no avail to the appellant – plaintiff in view of the fact appellant – plaintiff has been evicted in due course of law by the defendants and the possession has already been

circumstances, this Court does not find any infirmity, illegality in the findings of the courts below. The judgments & decrees passed by both the courts below are absolutely in consonance with the evidence available on record. There is no question of law, what to talk of any substantial question of law, rather this Court is of the considered view that instant appeal is nothing but an abuse of process of law.

13. In the light of what has been discussed above, this court finds no merit in the instant appeal, as such, the same is dismissed, leaving the parties to bear their own costs.

September 28, 2015
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(Jaspal Singh)
Judge