

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3303 of 2015 (O&M)
Date of Decision: July 17, 2015

Hakam Singh and others

...Appellants

Versus

Tejinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Pallavi Singh, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-defendants have filed this regular second appeal against respondents-plaintiffs, challenging the impugned judgment and decree dated 20.12.2011 passed by learned Civil Judge (Junior Division) Amritsar, vide which the suit filed by the plaintiffs-respondents for possession was decreed and also the judgment and decree dated 30.03.2015 passed by learned Addl. District Judge, Amritsar, vide which the appeal filed by the appellants-defendants was dismissed.

The brief facts of the case are that plaintiffs-respondents Tejinder Singh Siddle, Satnam Singh Siddle, Hardip Kaur, Rajinder Kaur and Manjit Kaur filed a suit against Hakam Singh through LRs, Nirmal Singh and Lal Singh alias Gurlal Singh alias Lal, for possession of House bearing No.4122-A, Municipal No.8749/XVI, Gali

No.4/5 Kot Baba Deep Singh, Amritsar and the recovery of ₹54,000/- as mesne profits for use and occupation of the said house. The case of the plaintiffs is that Jawand Singh was owner of the house in dispute. On 20.05.1968, he sold the same to his son Lal Singh for a consideration of ₹3000/- and gave possession to him. Lal Singh remained in possession of the house as owner till his death, who died in the year 1978. The plaintiffs are the legal heirs of Lal Singh and being his legal heirs, they came into possession as owners. Defendant-Hakam Singh (since died) is the real uncle of the plaintiffs, who was residing with his sons in a separate house. He approached the plaintiffs for use and occupation of the said house as a licensee and the plaintiffs allowed him to occupy the said house as a licensee. After some time, Hakam Singh parted possession of the upper story to defendants No.2 and 3 without the consent of the plaintiffs. Now, all the defendants are in the possession of the ground floor whereas Hakam Singh was in possession of the godown on the ground floor of the house. He started living there and all the defendants are using said house without paying any mesne profits. It is also the case that notice was also given to the defendants. It is further the case of the plaintiffs that defendant No.1 instead of vacating the house, filed a false suit for permanent injunction in the month of December 2004, which is pending and in that suit, he made false allegations that he is in possession as owner of the entire house and his father Jaswant Singh did not execute any sale deed in favour of Lal Singh.

On the other hand, the case of the defendants is that

Jaswant Singh son of Sham Singh was owner of house No.4122 street No.5 Kot Baba Deep Singh, Amritsar. It has been further alleged that the defendants have no concern with the house bearing No.4122-A as mentioned in the head note of the plaint. The defendants have concern with house bearing No.4122, street No.5 Kot Baba Deep Singh, Amritsar. It is also stated that Jaswant Singh may have two properties No.4122A and 4122 and defendants have no knowledge of ownership of house bearing No.4122A. It is also alleged that Municipal Number of house in dispute is not 8749/XVI. The sale deed was denied. The remaining material facts were also denied.

After framing the issues and after giving opportunity to the parties to lead evidence, learned Civil Judge (Junior Division) Amritsar, decreed the suit of the plaintiffs, on the basis of the evidence. Aggrieved from the above-said judgment and decree, defendants filed appeal before learned District Judge, Amritsar and learned Addl. District Judge, Amritsar, dismissed the appeal vide judgment and decree dated 30.03.2015.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellants-defendants.

At the time of arguments, learned counsel for the appellants argued that findings given by the Courts below are incorrect and not as per law and both the judgments and decrees are liable to be set aside.

I have heard learned counsel for the appellants and have gone through the record.

From the record, first of all, I find that the findings given by the Courts below are concurrent, as per law and do not require any interference from this Court. Secondly, no substantial question of law arises in this regular second appeal. Further, I find that nothing has been pointed out as to which evidence has been misread by the Courts below and how the findings given by the Courts below are perverse. Learned Civil Judge discussed the evidence and the pleading of the parties. As per the case of the defendants, they denied the sale deed and stated that it is fake and fabricated. The sale deed is a registered document executed in the year 1968 and it was not challenged by father of Lal Singh. Lal Singh died in the year 1978. The defendants are alleging that they are owner of the house No.4122 and 4122A may be a separate property. The plaintiffs brought the Municipal Clerk with the record and discussed their documents in minute detail. The plaintiffs have also produced on the file, copy of the sale deed Ex.P1, certified copy of assessment register of the property in dispute from the record of the Municipal Corporation, Amritsar Ex.PY and PZ. As per the sale deed of the house in dispute, the total area is 68 yards and it measures 53½ x 11½, to its East there is house of Mohan Singh, towards the North, there is property of Piara Singh; on its South, there is the property of Puran Singh and on the western side, there is market. Defendant Nirmal Singh while appearing as DW-5, in his cross-examination

clearly admitted that present municipal number of the house in dispute is 8749/XVI situated in Gali No.4/5, Kot Baba Deep Singh, Amritsar. He also admitted in his cross-examination the area and boundaries tallied with the sale deed Ex.P1. The certified copy of the assessment register produced by the plaintiffs on the record Ex.PY, clearly proves that the previous number of the house was 4122A and the present municipal number is 8749/XVI and then in the assessment register for the year 2004-2005 Ex.PZ, it has been shown that the house whose present number is 8749/XVI is in occupation of Hakam Singh who died during the pendency of the suit and LRs were impleaded in his place.

Learned Court on the basis of these documents, held that there cannot be two houses bearing one municipal number. Defendant Darshan Singh appeared as DW-7 and in his cross-examination, he admitted that previous number of the house in which the defendants are residing was 4122A and further admitted that Jawand Singh owned only one house in Gali No.5, Kot Baba Deep Singh, Amritsar, in which there was a factory. The Court also held that from the dimensions as well as boundaries as given in the evidence, there is only one house and not two houses as 4122 and 4122A.

From the perusal of the evidence on record, I find that both the Courts below have not misread the evidence. The findings are as per law. In no way, the findings can be held as perverse. On the basis of the sale deed Ex.P1, the plaintiffs are the owners of the suit property and the defendants are held to be licensee.

In view of the above discussion, I find the judgments and decrees passed by both the Courts below are correct, as per evidence and law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 17 2015
Vgulati

(INDERJIT SINGH)
JUDGE