

RSA No.124 of 2014

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

RSA No.124 of 2014

Date of decision: 25.08.2015

Aman Nath and another

... Appellants

Vs.

Rati Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Anil Kshetarpal, Senior Advocate with
Mr. Manvinder S.Saini, Advocate
for the appellants.

Mr. Rajiv Sharma, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned judgments and decrees of both the Courts below, whereby, the suit for permanent and mandatory injunction from encroaching, grabbing or interfering in the peaceful possession of the property has been dismissed.

Mr. Anil Kshetarpal, learned Senior counsel assisted by Mr. Manvinder S.Saini, Advocate submits that the suit was simplicitor for permanent injunction restraining the defendants not to interfere in the peaceful possession and not to raise construction and in case,

RSA No.124 of 2014

during the pendency of the suit, they were able to raise construction the same would be removed by them and hand over the vacant possession. He further submits that the plaintiffs had become the owners of the property vide three sale deeds, i.e, 20.12.200, 19.02.2001, 16.05.2001, in respect of an area measuring 3939.50 square yards which consists of Haveli and vacant land. The status of the plaintiffs is as of licensee as caretaker and therefore, the suit aforementioned was filed. He further submits that both the Courts below, without framing any issue regarding title, had set aside the sale deeds, aforementioned, which was not within its scope, much less, not even disputed by the defendants and inasmuch as defendants had not challenged title. He submits that finding qua declaration of the sale deeds are liable to be expunged, much less, set aside and the appellant-plaintiffs will take appropriate measure, i.e, for declaration and possession, if any, in accordance with law. Thus, following substantial question of law arise to be adjudicated by this Court:-

i) Whether the Courts below in a suit for permanent injunction can pass a declaration holding that the plaintiffs were not owner of the property as per the sale deeds on the premise that the plaintiffs have not been able to prove the ownership of their vendor?

Mr. Rajiv Sharma, learned counsel appearing on behalf of the respondents submits that there is no illegality and perversity in

RSA No.124 of 2014

the finding rendered by the Courts below and no substantial question of law arises, to be adjudicated by this Court as the finding has been rendered on the basis of oral and documentary evidence. The possession of the respondent-defendants is continuously uninterrupted before the execution of the sale deeds and therefore, the suit filed, is not maintainable.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of both the Courts below.

The admitted position on record is that the suit for permanent injunction restraining the defendants from encroaching, grabbing or interfering into peaceful possession of the property as described in para 1 of the plaint and restraining defendants from raising any kind of construction over the property alleged to be owned by the plaintiffs has been filed and in the alternative, mandatory injunction be issued, in case, the defendants have already raised the construction, i.e., by demolishing all the construction, by handing over the vacant possession. The trial Court on the basis of the pleadings framed following issues:-

- “1. Whether the plaintiffs are entitled for injunction on the grounds as alleged? OPP*
- 2. Whether the suit is not maintainable in the present form?OPD*
- 3. Whether the plaintiffs have not come to the*

Court with clean hands? OPD

4. *Whether the plaintiffs are estopped from filing the present suit by their own acts and conduct?*

OPD

5. *Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD*

6. *Relief.*

On going through the issues, it is revealed that there is no issue of declaration, much less, title involved. It was not the case of the parties that by claiming injunction, relief of declaration was inherent.

Be that as it may, the fact remains that the Court was enjoined upon an obligation to determine whether the appellant-plaintiffs were able to get the injunction as sought for or not. There was no occasion to decide the title as the respondents had set up defence of adverse possession.

The lower Appellate Court while affirming the findings of the trial Court in the impugned judgment, observed as under:-

“15. Regarding possession of suit property, photograph Ex.D1 establish that there are houses of defendants on the spot and the same are old construction. Ex.D3/A also prove that villages Harchandpur and Khor are two separate village. It has been proved on record on the basis of the statements of witnesses examined by the

plaintiffs that Thakur Jai Singh and others were the owners of the suit property. They had not signed any document relating to suit property on the basis of which vendors of the plaintiffs had become owner of the suit property. Meaning thereby the vendors of sale deed Ex.P2 to Ex.P4 were not the owner of the suit property and they could not pass any title in favour of the plaintiffs and actually possession on the spot is not of the plaintiffs but of defendants. Learned Trial Judge has already considered these aspects while recording findings under issue No.1 and the said findings do not call for any interference and the same are hereby affirmed.

16. As in this case, appellants/plaintiffs assert their claim on the basis of sale deeds Ex.P2 to Ex.P4 that they have become owner of the property and sale deeds got presumption of truth and correctness attached to the same but learned Trial Judge has not appreciated the real controversy. However, plaintiffs have not been able to prove that the vendors of sale deeds Ex.P2 to Ex.P4 were actual owner of the suit property. Rather, defendants have been able to produce and prove on the file that originally the entire land of villages Khor and Harchandpur was owned by Thakur Jai Singh and defendants had derived their right in the suit property

through them. Defendants are in possession of the suit property from the time of their fore-fathers.”

The finding, in my view, is not required to be rendered as there was no issue with regard to title.

Keeping in view the aforementioned facts and circumstances of the present case, the question of law, aforementioned, is answered in favour of the appellant-plaintiffs to the extent that the finding noticed above, will not come in the way of appellant-plaintiffs in seeking an alternative relief of declaration or possession, if any, in accordance with law.

With the aforementioned observations, the impugned judgments and decrees are modified and it is held that decree would not construe that the appellant-plaintiffs are not owners, as they will be at liberty to seek declaration of the title and other consequential relief in independent proceedings.

Accordingly, the regular second appeal is partly allowed.

(AMIT RAWAL)
JUDGE

August 25, 2015
savita