

In the High Court of Punjab and Haryana at Chandigarh

.....

CM No.5083-C of 2014

and

R.S.A. No.2090 of 2014

.....

Date of decision:20.5.2015

Dhani Ram

.....Appellant

v.

Bachna and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Naveen Batra, Advocate for the appellant.

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Inderjit Singh, J.

CM No.5083-C of 2014:

For the reasons mentioned in the civil miscellaneous application, exemption from filing the certified copy of judgment and decree dated 29.5.2013 and grounds of appeal filed before learned District Judge, Ropar, is allowed subject to all just exceptions.

The civil miscellaneous application stands disposed of.

R.S.A. No.2090 of 2014:

This regular second appeal has been filed by Dhani Ram-appellant/defendant No.2 against Bachna-respondent/plaintiff and Swarna Ram etc. proforma respondents/defendants aggrieved against the impugned

judgment and decree dated 29.5.2013 passed by the learned Additional Civil Judge (Senior Division), Anandpur Sahib, vide which the suit filed by plaintiff-Bachna against Ramji etc.-defendants for permanent injunction was decreed and also against the impugned judgment and decree dated 18.12.2013 passed by the learned Additional District Judge, Ludhiana, vide which the appeal filed by Dhani Ram and Swarna Ram has been dismissed.

The brief facts of the case are that Bachna-plaintiff filed a suit against Ramji, Dhani Ram and Swarna Ram-defendants for permanent injunction restraining the defendants from interfering, in any way, and dispossessing the plaintiff from the suit property compromised in Khewat/Khatoni No.217/231 and Khasra No.537R (6-7) and 538R (29-11) or in the alternative suit for possession. It is mainly the case of the plaintiff in the plaint that earlier this suit was decreed, but the learned Additional District Judge remanded the matter back to the Court to decide afresh after giving opportunity to the defendants to cross-examine the Local Commissioner and again the learned Additional Civil Judge (Senior Division) after compliance decreed the suit of the plaintiff. The plaintiff stated in the complainant that he is owner in possession of the suit property and the defendants have no concern with the same.

On the other hand, the defendants stated that the plaintiff is estopped by his own conduct and long silence regarding possession of defendants in Khasra No.537, where their residential houses exist for the last more than 50 years. It is also stated that previously the suit property being owned by Central Government and after independence the

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predecessor of the defendants raised their residential house in Khasra No.537 and are in possession of land measuring 18 Marlas. The plaintiff purchased the land through auction from Government about in the year 1977 and started threatening to dispossess father of the defendants from the suit property and the matter was reported to the local Police and to other administrators. Thus, Bachna compromised the matter and he agreed that he will not dispossess father of the defendant in future. He also agreed that first he will obtain absolute rights of ownership, then he will execute the sale deed in favour of Budhu etc. regarding land in question. The defendants requested the plaintiff many times to execute the sale deed about the land which is in their possession, but the plaintiff did not do so. It is also stated in the written statement that the possession of the defendants matured being an adverse possession.

Both the parties produced evidence. The Local Commissioner was also appointed and examined and the learned Additional Civil Judge (Senior Division) vide judgment and decree dated 29.5.2013 decreed the suit of the plaintiff.

The learned counsel for the appellant at the time of arguments argued that the defendants No.2-appellant is in possession over the property and the suit has been wrongly decreed. He also argued that the defendant No.2-appellant has become owner by way of adverse possession.

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

From the record, I find that first of all the defendants have

failed to prove their adverse possession by leading cogent evidence. There is nothing in the written statement that the plaintiff is not the owner of the property and their possession is open, continuous and hostile. Rather, the defendants in the written statement themselves alleged that this property was allotted to the plaintiff in the year about 1977 and the plaintiff was threatening father of the defendants, which means that the possession of the defendants cannot be held open and hostile. Again, it is in the written statement that the defendants as per writing agreed to purchase this property from the plaintiff, which means that at the time of execution of the writing, the defendants admitted the plaintiff as owner. It is also in the plaint that the defendants requested many time to execute sale deed. In view of these pleadings and evidence, it cannot be held that the defendants are in adverse possession. Rather, they are admitting the ownership of the plaintiff and asking him to execute the sale deed in their favour. Further more, there is no cogent evidence on record to prove the possession of the defendants over the suit property i.e. 18 Marlas. As per revenue record and as per allotment letter issued by the State Government and as admitted by the defendants themselves in the written statement, the plaintiff is owner of the property in dispute. Local Commissioner was appointed and in view of the report of the Local Commissioner, there is very old construction and there are two rooms etc. without any roof in the property in dispute. No body is residing in the property as alleged by the defendants. In the evidence, the defendants stated that they were earlier residing and they have taken the electricity connection from the adjoining house. There is no documentary evidence or

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any such record of Electricity Department to prove the possession of the defendants over the suit property. The Courts have discussed the evidence in right perspective minutely and have given the correct findings. The findings given by the Courts below are concurrent and as per evidence. There is nothing on the record that the Courts below have misread any evidence. The findings recorded in the impugned judgments and decrees passed by the Courts below do not require any interference from this Court and the same are upheld. Otherwise also, no substantial question of law arises in this regular second appeal.

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

May 20, 2015.

(Inderjit Singh)
Judge

hsp