

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

RSA No.2307 of 2014(O&M)
Date of decision: 16.02.2015

Gheera and others

...Appellants

Versus

Parshan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Mohd. Yousaf, Advocate for the appellants.

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

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was decreed by the trial court vide judgment and decree dated 11.02.2013. Appeal preferred against the said decree failed and was dismissed on 09.12.2013. This is how, defendants are before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiff prayed for a decree for possession of a land measuring 5 marlas, comprised in khewat No.154, khatauni No.216, khasra No.137, situated in village Lasariwal, shown in red colour in the site plan, appended with the plaint. A decree for injunction was also claimed, restraining the defendants from transferring the possession of the suit property to any third party. It was averred that plaintiff

happened to be the owner of the land in question and defendants had illegally trespassed over the said land about 2/3 years back. Plaintiff requested the defendants to vacate the suit property and hand over the vacant possession, but defendants not only denied the ownership of the plaintiff, but also disputed that the same was comprised in khasra No.137. On an application made by the plaintiff, demarcation of the suit property was carried out and it was found that the same was a part of khasra No.137. Even post demarcation, plaintiff requested the defendants to restore possession of the suit property to the plaintiff, but to no avail. Thus, the suit.

In defence, it was pleaded, inter alia, that Parkash Ram i.e. the father of defendants No.1 to 3 and husband of defendant No.4, entered possession of the suit land on 02.10.1963, in presence of the plaintiff and some other persons. Thereafter, defendants even raised a residential house upon the suit property and started living therein. Neither the plaintiff nor anybody else ever questioned the possession of the defendants. Nor raised any objection, when they constructed the house. Subsequent to death of Parkash Ram, defendants being his heirs were in uninterrupted and continuous possession of the suit property to the knowledge of the plaintiff. Therefore, defendants acquired title in the suit land by way of adverse possession immediately on the expiry of 12 years i.e. 02.10.1973.

On a consideration of the matter in issue and evidence on record, the courts below found that a witness examined by the defendants i.e. Jeela (DW1), admitted in his cross-examination that plaintiff Parshan Singh was the owner of the suit property. Boundaries of the suit property, that were admitted by Jeela (DW1), in his statement, were identical as depicted in the site plan (Ex.P1). Witnesses examined by the defendants testified the correctness of the site plan (Ex.P1), produced by the plaintiff. Jamabandi for the year 2004-05 (Ex.P5) revealed that the plaintiff happened to be the owner of the suit property bearing khasra No.137(0-5). Further, defendants set out a contradictory plea as on the one hand, they denied the title of the plaintiff qua the suit property, but on the other, they maintained that possession of the predecessor-in-interest of the defendants i.e. Parkash Ram was adverse to the knowledge of the plaintiff. Therefore, once, defendants set up a plea of adverse possession, title of the plaintiff was deemed to be admitted. And once that was so, there could hardly be a dispute that the suit property was comprised in khasra No.137. As regards the plea of adverse possession, it was concluded that for defendants to succeed, they were required to prove: (i) as to on what date they entered into possession of the suit property; (ii) what was the nature of their possession; (iii) whether the factum of possession was known to the other party; (iv) as to how long did defendants

continue in possession of the suit land; (v) that the possession of the defendants was open and undisturbed. On a due and comprehensive consideration of the material and evidence on record, it was observed that the defendants failed to prove as to when did, they actually enter possession of the suit land. Nothing was brought on record to show as to what was the nature of their possession. And for how long it continued. The electricity bills that were produced by the defendants in support of their claim actually pertained to some other village. Witnesses examined by the defendants testified in their cross-examination that defendants had taken possession of the suit property in the year 2006, which completely falsified the claim of the defendants. Accordingly, it was observed that no substantive evidence was brought on record by the defendants to prove that they had perfected their title by prescription. Oral testimonies of the defendants and their witnesses were not sufficient to prove the extinguishment of title of the plaintiff qua the suit property. Plea of the defendants that they had constructed house in the suit land on 02.10.1963, also remained unproved on record, as no maison was examined by the defendants, who had constructed the house. No brick kiln or cement vendor was examined from whom the building material was purchased to raise the alleged house. No independent witness, who also was a resident of the same vicinity, was examined by the defendants to substantiate their

claim. Nothing was brought on record to prove that a house indeed was constructed by the defendants in the suit land on 02.10.1963. Resultantly, the suit was decreed. Appeal preferred against the said decree failed and was accordingly dismissed.

I have heard learned counsel for the appellants at length and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is wholly devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiff to be entitled to a decree for possession, he was required to prove that he had held a title thereto. Jamabandi for the year 2004-05 (Ex.P5) revealed that the land measuring 5 marlas, comprised in khasra No.137, was owned by the plaintiff. Witness examined by the defendants i.e. Jeela (DW1) conceded that plaintiff Parshan Singh was the owner of the suit property. He also testified that the boundaries of the suit property, as depicted in the site plan (Ex.P1), were corrected as per the position on the spot. Defendants claimed to have become owners of the suit

property by prescription, the plea which pre-supposes plaintiff to be the owner. Once that was so, it could hardly be disputed that the suit property does not form part of khasra No.137. The correctness of the site plan was not only proved but even conceded by Jeela (DW1). That being so, the only way the defendants could still defeat the claim of the plaintiff was by proving that they had perfected their title by prescription. Nothing was brought on record to prove as to when did the defendants entered possession of the suit property. No evidence was led to substantiate as to what was the nature of the possession of the defendants. And as to from which date it was known or in the knowledge of the plaintiff. In fact, column No.5 of the jamabandi for the year 2004-05 (Ex.P5), reveals that the plaintiff was shown to be in possession of the suit property. Plea of the defendants that they had constructed a house in the suit land on 02.10.1963, remained unproved and unsubstantiated on record. No evidence, least cogent, was brought on record that the defendants indeed constructed any house in the suit land. As observed by the courts below, the witnesses examined by the defendants testified in their cross-examination that the defendants had entered possession of the suit property only in the year 2006. The electricity bills brought on record in support of their claim, pertained to some other village and were thus of no consequence. Defendants failed to examine any witness from

the vicinity or locality to prove that the defendants actually raised construction in the suit property on 02.10.1963. Learned counsel for the appellants could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 16, 2015
Rajan

(Arun Palli)
Judge