

In the High Court of Punjab and Haryana at Chandigarh

.....

R.S.A. No.598 of 2015 (O&M)

.....

Date of decision:13.5.2015

Ram Niwas

.....Appellant

v.

Jora Singh and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. S.K. Hooda, Advocate for the appellant.

Mr. Vikram Singh, Advocate for respondent No.1.

.....

Inderjit Singh, J.

This regular second appeal has been filed by Ram Niwas-appellant/plaintiff against Jora Singh etc.-respondents/defendants challenging the impugned judgment and decree dated 31.1.2015 passed by the learned Additional District Judge, Kaithal, vide which the appeal filed by Jora Singh-defendant No.4 against Ram Niwas, has been allowed and the judgment and decree dated 7.12.2012 passed by the learned Civil Judge (Junior Division), Kaithal, decreeing the suit of the plaintiff has been set aside and the suit of the plaintiff was dismissed.

As per the brief facts of the case, Ram Niwas-plaintiff filed suit for decree for permanent injunction restraining the defendants from, in any way, interfering in the lawful and peaceful possession of the plaintiff over

the suit property by dispossessing him or by demolishing the structure raised by him on the suit property or by encroachment. The case of the plaintiff is that the land measuring 1 Kanal 13 Marlas, being 33/930 shares of total land measuring 46 Kanals 10 Marlas, as fully described in the plaint bearing plot Nos.72 to 75 measuring 1000 sq. yards is owned by the plaintiff. It is stated that earlier the said specific portion i.e. suit land was owned and possessed by one Ashok Kumar, who sold the same to Raj Kumar vide sale deed dated 24.5.1993. Said Raj Kumar equitably mortgaged the said property with HFC as collateral security for the loan raised by M/s Kishkandha Foods, Jind vide mortgage deed dated 22.5.2000. The HFC initiated proceedings to recover the said land amount from the said property in dispute, being mortgaged and collateral security, and entered into an agreement to sell the said property with one Subhash Chand. The plaintiff is the owner in possession of the said specific property bearing plots No.72 to 75 and had raised the construction of boundary wall of about 4 feet height and a Kotha over the same and is in possession of the same.

On the other hand, the case of defendants No.3, 4 and 8 in the written statement is that the plaintiff had already sold the above said land measuring 1 Kanal 13 Marlas, to one Subhash Chander vide agreement to sell No.2713 dated 13.2.2010, for a total sale consideration of ₹4 Lacs and received the whole of the sale consideration as per said agreement. The answering defendant No.4 is the owner of land measuring 2 Kanals 16.19 Marlas, out of total land measuring 46 Kanals 10 Marlas, mentioned above. Answering defendant No.4 purchased the said land from Vinod Kumar vide

agreement to sell dated 15.1.2010 and since then he along with son defendant No.3 are co-owners in possession of the land. Defendants No.1, 2, 5 to 7 were proceeded against ex parte.

The learned Civil Judge (Junior Division), Kaithal, after discussing the evidence on record decreed the suit of the plaintiff for permanent injunction. Defendant No.4 Jora Singh filed an appeal against plaintiff Ram Niwas and others proforma-respondents before the District Judge, Kaithal. The learned Additional District Judge, Kaithal, vide judgment and decree dated 31.1.2015 set aside the judgment and decree passed by the learned Civil Judge (Junior Division), Kaithal, and dismissed the suit of the plaintiff.

Notice of motion has been issued in this case. Mr. Vikram Singh, Advocate put in appearance on behalf of respondent No.1-Jora Singh and contested this regular second appeal. Lower Courts record was also summoned.

The substantial question of law arises in this appeal was “whether the findings given by the learned Additional District Judge are perverse and not as per evidence?”

I have heard learned counsel for the parties. Learned counsel for the appellant-plaintiff argued that the findings given by the learned Additional District Judge, Kaithal, are incorrect and not as per law. The findings of the learned Additional District Judge that in document Ex.P.13 description of plots No.72 to 75 is also not mentioned, is against the document i.e. against the evidence that is contents of the document. He

further argued that the findings are otherwise given by the learned Additional District Judge by misreading the evidence. It is no where the case of the defendants that they are in possession of this specific property.

On the other hand, learned counsel for respondent-defendant No.4 argued that the findings given by the learned Additional District Judge in the judgment are correct and as per law. The plaintiff has failed to prove his case and the suit has been rightly dismissed in appeal by the first appellate Court.

I have heard learned counsel for the parties and have gone through the record. From the record, I find that first of all this suit is mainly contested by defendant No.4 Jora Singh and the written statement has been filed on behalf of defendants No.3, 4 and 8. Defendant No.3 is son of defendant No.4. In the preliminary objection in para 5(a), it is stated that one Ashok Kumar sold his land measuring 1 Kanal 13 Marlas being 33/930 share out of total land measuring 46 Kanals 10 Marlas to one Raj Kumar son of Hukam Singh vide sale deed dated 24.5.1993. It means that the contesting defendants have admitted this averment of the plaintiff in the plaint. It is also admitted that said Raj Kumar son of Hukam Chand equitably mortgaged the said land with HFC as collateral security for the loan raised and after he defaulted in repayment of the loan to HFC, it took the possession of the said land i.e. 1 Kanal 13 Marlas. It is also stated that for recovering the loan amount from the said land being mortgaged as collateral security, the HFC had given public notice to sell the said land without mentioning any specific portion and the plaintiff purchased the said

land vide conveyance/sale deed dated 6.3.2009 without mentioning the specific portion. A perusal of these averments in the preliminary objection of the written statement filed by them shows that earlier Ashok Kumar sold 1 Kanal 13 Marlas to Raj Kumar and Raj Kumar equitably mortgaged the said property with HFC. As per the written statement, the HFC took possession of the said land measuring 1 Kanal 13 Marlas. So, the argument of the learned counsel for the respondent that property has not been described properly and is uncertain has no merit as the HFC has taken possession of 1 Kanal 13 Marlas. It is also admitted that the plaintiff has purchased the suit property measuring 1 Kanal 13 Marlas from the HFC vide sale deed dated 6.3.2009, which means that 1 Kanal 13 Marlas specific property has been purchased by the plaintiff and he is owner in possession of the same. In the written statement, nowhere it is the case of the defendant that he is in possession of 1 Kanal 13 Marlas. It is further case of the defendants that the plaintiff has already sold the above said land measuring 1 Kanal 13 Marlas to Subhash Chand vide agreement to sell. As argued before this Court, Subhash Chand has given affidavit and deposed in support of the plaintiff and states that the plaintiff is in possession of 1 Kanal 13 Marlas. Further more, I find that so many documents have been placed on the record showing the property as plots No.72 to 75. The property has also been mentioned in the plaint by giving the description as on north: plot No.71, on south: plot No.76, on east: open land and on west: 20 feet wide road. The plaintiff has examined PW-3 Subhash Chand, who deposed in favour of the plaintiff. The Draftsman has proved the site plan.

PW-5 Ram Niwas also deposed as per plaintiff's case. Then Suresh Kumar PW-6 attesting witness of the sale deed has proved the sale deed dated 24.5.1993 as Ex.P.13. A perusal of this document shows that in this sale deed specifically there is mention of plots No.72 to 75 and the learned Additional District Judge has wrongly held that there is no mention in the sale deed Ex.P.3 of plots No.72 to 75.

The learned Civil Judge (Junior Division), Kaithal, after appreciating the evidence and specially the documents Ex.P.1 to P.3 and P.9 held that the property as described in these documents and as described in the plaint Ex.P.1, as agreement to mortgage deed dated 22.5.2000, Ex.P.3 as memorandum of entry and Ex.P.9 as agreement to sell the land is the same. Affidavit Ex.PW.11/A of Subhash Chand has been executed in favour of Ram Niwas. The Court also held that Ashok Kumar had sold the property to Raj Kumar as mentioned in the plaint and Raj Kumar mortgaged the same property to HFC.

From the evidence on record, I find that the plaintiff has led cogent oral as well as documentary evidence to prove his possession over the suit property and further more the defendants in the written statement have nowhere stated that they are in possession over the suit property. Rather, the plea as taken in the written statement, as discussed above, supports the case of the plaintiff. Therefore, the learned Additional District Judge has misread the evidence and his findings are against the pleadings as well as evidence on record.

Therefore, in view of the above discussion, I find that the

[7]

judgment and decree passed by the learned Civil Judge (Junior Division), Kaithal dated 7.12.2012 is correct and as per law and the reasoning have been given by correctly appreciating the evidence of the parties. The judgment and decree passed by the learned Additional District Judge are given after misreading the evidence and, therefore, the same are set aside. The judgment and decree dated 7.12.2012 passed by the learned Civil Judge (Junior Division), Kaithal, are upheld.

Finding merit in the regular second appeal, the same is allowed accordingly.

May 13, 2015.

(Inderjit Singh)
Judge

hsp