

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 905 of 2015
Date of decision 13.03.2015.

Sant Ram

..... Appellant.

versus

Banta Ram and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. B.S.Dhillon, Advocate for the appellants.

K.C.PURI, J.

Plaintiff-appellant-Sant Ram has directed the present appeal against the judgment and decree dated 24.12.2014 passed by Shri Lalit Batra, learned District Judge, Kurukshetra vide which the appeal against the judgment and decree dated 11.2.2013 passed by Shri Sumit Garg, learned Additional Civil Judge (Senior Division), Pehowa was dismissed.

2. In brief, the case of the appellant-plaintiff is that he is in peaceful and lawful exclusive possession over the bara marked by letters ABCDEFGH shown in red colour in the site plan and situated within the abadi deh of village Jakhwala tehsil Pehowa District Kurukshetra as

mentioned in para No.1 of the plaint. Goharas, parali and trees belonging to plaintiff are lying standing over the suit property. He has also constructed a Peer and has also sown vegetables over the suit property. Suit property is adjacent to the house of plaintiff and he uses the same for ingress and outgress. Earlier, parents of plaintiff were the owners of suit property and later on about four years back, suit property fell to his share in family settlement arrived at on 1.1.2004. Houses of defendants namely Banta Ram, Sat Pal and Beera are also situated adjacent to suit property but there is no door and window of defendants towards suit property. Defendants being young and having political influence want to take forcible possession of the suit property from the plaintiff. It is alleged that even if plaintiff is not exclusive owner of suit property in terms of family settlement, even then plaintiff being co-owner and in exclusive possession over suit property is entitled to protect his possession qua the same. Hence the suit.

3. On notice defendant Nos.1, 2, 4 and 6 did not appear before the trial court. Accordingly they were ordered to be proceeded ex-parte whereas defendant No.7 was given up by the plaintiff-appellant during trial.

4. Defendant Nos. 3 and 5 appeared and filed written statement, wherein preliminary objections inter alia of maintainability, locus standi and concealment of true and material facts from the Court were taken. On merits, it is denied that plaintiff is in possession of the suit property. Property shown in yellow and red colour and green portion marked by letters GHIJ in the site plan attached with the written statement was in the ownership of plaintiff, Banta Singh defendant and legal heirs of Karma.

However, property shown in yellow colour in the site plan was kept reserved for Peerbaba whereas property marked by letters GHIJ, fell to the share of plaintiff upon which he has raised construction recently. Further property shown in red colour marked by letters CDFGH in site plan fell to the share of defendant No.1 Banta Singh and heirs of Karma in equal shares and since then said property is owned and possessed by them in equal shares. Banta Ram has already sown vegetables in the suit property and their koop (heap of husk) etc. are also situated there. Construction of Peerbaba is also of the defendants. It is further contended that under the garb of instant suit, plaintiff wants to grab the land of defendants and that too without any right, title or interest therein. Since the defendants are in possession of portion shown in red and yellow colours as shown in the site plan being owners thereof, question of taking forcible possession of said property from the plaintiff does not arise at all. Remaining averments have been denied and hence prayer has been made for dismissal of the suit.

5. In the replication, plaintiff controverted the plea taken up in the written statement and reiterated his stand taken in his plaint. From the pleadings of the parties, following issues were framed by the trial court:-

1. Whether the plaintiff is in peaceful, lawful and exclusive possession of the suit property ? OPP
2. If issue No.1 is proved, then whether the plaintiff is entitled to the relief of permanent injunction ? OPP
3. Whether the suit of plaintiff is not maintainable? OPD.
4. Whether plaintiff is guilty of suppressing of true and material facts ? OPD

5. Relief.

6. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court vide judgment and decree dated 11.2.2013 dismissed the suit of the plaintiff with no order as to costs.

7. Feeling dissatisfied with the aforesaid judgment and decree dated 11.02.2013, the plaintiff-appellant has directed the First Appeal, which was dismissed by learned District Judge, Kurukshetra vide judgment and decree dated 24.12.2014 after re-appraisal of the evidence.

8. Still feeling dissatisfied with the judgment and decree dated 11.02.2013 and judgment and decree dated 24.12.2014, the present regular second appeal has been directed.

9. The plaintiff-appellant in paragraph No.09 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (1) Whether both the Courts below misread the evidence as well as the pleading of the appellant-plaintiff ?
- 2) Whether both the Courts below ignored the material evidence brought on record i.e. affidavit Ex.PW1/A- (Annexure A/1) and cross-examination (Annex-A/2) of PW-1 as well as affidavit Ex.DW1/A (Annex. A/3) and cross-examination (Annex.-A/4) of DW1?
- 3) Whether non-appearance of defendants No.1,2, 4 & 6 to contest the suit itself proves the possession of the appellant-plaintiff over the suit property ?
- 4) Whether the property in dispute being situated within abadi deh of village Jakhwala required registered documentary proof to prove the ownership which has no

specific number ?

- 5) Whether the impugned judgments and decrees passed by both the courts below are liable to be set-aside being illegal, arbitrary and against the settled principles of law ?

10. I have heard learned counsel for the appellant and have gone through the case file.

11. Learned counsel for the appellant has submitted that both the Courts below have misread the evidence as well as pleading of the plaintiff/appellant. It is submitted that both the Courts below have ignored the material evidence brought on the record in the form of Affidavit Ex.PW1/A and affidavit Ex.DW1/A. It is further contended that defendant Nos.1, 2, 4 and 6 have not contested the suit. The property was situated in abadi deh of village Jakhwala and as such no documentary evidence regarding the ownership can be proved.

12. I have carefully considered the said submission but do not find any force in the said submission.

13. The appellant has claimed to be the owner in possession of the suit property. It is not disputed during the course of argument that there is no documentary evidence on the file to prove ownership and possession of the plaintiff. It cannot be said that judgments and decrees of both the Courts below is the result of misreading of evidence and pleadings of the appellant. The bald statement made by the parties regarding ownership and possession are meaningless. Mere fact that some of the defendants have not contested the suit and have been proceeded ex-parte is not a ground for decreeing the suit of the plaintiff. It is settled law

that plaintiff has to prove its case and cannot derive the benefit of weakness of the case of the defendants.

14. There is concurrent finding of fact recorded by both the Courts below that plaintiff is neither the owner nor in possession of the suit property. That finding of fact cannot be interfered in the regular second appeal. So, I have no hesitation in holding that no substantial question of law has been arisen in the present appeal.

15. Consequently, the appeal is without any merit and the same stands dismissed.

16. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

March 13 , 2015
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