

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3983 of 2014 (O&M)

Date of Decision: 04.08.2015

Sukhpal Kaur and another

..... Appellants

Versus

Gurdeep Singh

..... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kulbhushan Soi, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This appeal arises out of a mere suit for permanent injunction restraining the defendants from interfering forcibly with the possession of the plaintiff except in due course of law. The demised premises are a shop situated in Bazar Kasaban Inside Delhi Gate, Ferozepur City as described in the plaint. Once upon a time, the demised property consisted of two shops separated by an intervening wall. Long ago the wall was demolished and has become a single commercial unit. It was the plaintiff's case that the two independent shops were once allotted to the predecessor-in-interest of the plaintiff and the defendants. Defendant # 1 Sukhpal Kaur is the widow of Jarnail Singh and mother of defendant # 2 Parminder Singh. The plaintiff Gurdeep Singh and Jarnail Singh are brothers. Jarnail Singh died 12-13 years before the suit was instituted. The two properties bear # B ICV-1R-2S-10 (for short "B-1") and B IV-3R-1 (for short "B-2"). The property B-1

was previously allotted to Amar Singh grand father of the plaintiff. The property B-2 was allotted to Harsa Singh father of the plaintiff. Amar Singh died 54 years ago before the suit is filed and Harsa Singh died in the year 1984. In 1987 the four brothers namely, Gurdeep Singh, Jarnail Singh, Daljit Singh and Ranbir Singh sons of Harsa Singh entered a writing regarding the share of property received by them. The suit property fell to the share of Gurdeep Singh and Jarnail Singh. Both the brothers had been running the business of selling Bangles etc. from the suit shop. The wall partitioning shops was demolished by consent of both brothers but they continued to do business from the same premises from the portion marked ABCD and ABEF. On the death of Jarnail Singh, the plaintiff came in exclusive possession of the entire property but he shared the proportionate income with the widow of his brother till September 2004.

2. It was the plaintiff's case that in September 2004, defendants # 1 and 2 received a sum of Rs.1 lac to relinquish their rights in the suit property and ever since plaintiff has exclusive possession in the entire property. The property has been allotted Municipal # 22, Block DS-6. The evidence was produced by the plaintiff to show his possession through receipts of payment of electricity bills etc.

3. Upon notice, the defendants filed written statement and contested the case alleging that the property was in possession of Jarnail Singh (husband and father of defendant # 1 & 2) as a lessee of Punjab Wakf Board. On Jarnail Singh's death the defendants came in possession of the suit property. The defendants have paid the lease money to the Punjab Wakf Board on November 03, 2004 amounting to Rs.13,862/- upon which lease

was issued in their favour. The property bears # B-II-3R/5 situated at Mohalla Kasaban, Ferozepur City which is mentioned in the lease deed which is the actual property number. The plaintiff has concealed the description of the property on the basis of which averments he filed the suit. The defendants did business in the said property. The property was never allotted to Harsa Singh, father of the plaintiff. Mere payment of bills of electricity etc. do not confer legal rights on the defendants in the suit property. For these reasons the suit was liable to be dismissed.

4. The plaintiff filed replication reasserting his claim over the suit property. He denied the issuance of leasing order or payment of lease money to the Punjab Wakf Board in 2004 as alleged by the defendants. The lease deed is not connected with the suit property. The electricity meter continues in the name of Jarnail Singh.

5. As many as five issues were framed by the trial court, the most important of which was issue # 1 as to whether the plaintiff is in possession of the suit land.

6. In order to prove their respective cases, the parties led their oral and documentary evidence. It has been recorded by the courts *a quo* that the defendants had failed to produce any evidence despite sufficient opportunity granted and it was closed by order. The trial court returned the finding that the plaintiff was in exclusive possession of the suit property and was entitled to the relief of permanent injunction on which findings the issue was decided in favour of the plaintiff and the suit was decreed with costs.

7. In appeal, the moot issue was issue # 1 as to possession. Possession is a pure question of fact and when evidence was not led to

establish the possession of the defendants over the suit property nothing remains of the lis. The suit was filed on January 04, 2005. The plaintiff produced on record the site plan Ex.P-1, Ex.P-2 the affidavit dated June 08, 1987 and Ex.P-91 an affidavit dated February 03, 2010. The court read the affidavit Ex.P-91 and found that Sukhpal Kaur defendant # 1 had given her shop to the plaintiff on February 03, 2010. An affidavit Ex.P-2 was a settlement between all the four brothers witnessed by Sarpanch of village Sadar Wala, namely, Harsa Singh and Ex- M.C., Ferozepur City, namely, Anoop Singh. No rebuttal evidence was produced by the defendants and, therefore, the findings of the trial court have been affirmed. The defendants in appeal urged on the strength of two decisions of the Bombay High Court in **Ganga Ram Sakha Ram Dhuri and others vs. Gangu Bai Raghu Nath Ayara and others**, 2007 (4) Civil Court Cases, 079 & **Mahadeo vs. Vatasalbai**, 2009 (1), Civil Court Cases, 018 on the proposition that where property is more than Rs.100/- then it requires compulsory registration and the document which requires compulsory registration cannot be received in evidence or any transaction affecting any property or confirming such power unless it is registered. The decisions were rendered in the light of section 17 (1) (b) of the Registration Act, 1908. On merits, it is argued that affidavits relied upon were inadmissible in law and were of no moment.

8. The learned Additional District Judge, Ferozepur in his judgment dated November 12, 2013 held that Ex.P-2 dated June 08, 1987 reflects partition of the suit property between four sons of Harsa Singh. It may be remembered that of the two adjoining properties separated by a wall were allotted to Harsa Singh and to Amar Singh respectively. Harsa Singh is the

son of Amar Singh. Therefore, the writing dated June 08, 1987 (Ex.P-2) is sufficient to be *prima facie* accepted as true. On the point of possession the courts have believed the electricity bills Exs.P-51 to 71, the photographs Exs.P-72 to 76 and their negatives Exs.P-77 to P-79 and the electricity bills Exs.P-80 to P-90 reflect the possession of the plaintiff over the suit property shown in the site plan Ex.P-1. The site plan was denied as correct but there was no affirmative evidence to prove to the contrary led by the defendants.

9. The stand of the defendants that they were in possession of the disputed shop and were running business is not supported by any document. With respect to the family partition the court held that in the Punjab, the parties had pre-existing rights to the property and they are settled between the joint owners then the document is not compulsorily registrable and, therefore, the rulings of the Bombay High Court are of no avail to the defendants. The only question in a simpliciter suit for permanent injunction is with regard to possession vesting in either of the parties based on evidence adduced. The title to property is not involved in such suit since that issue was not put to trial by proof of facts constituting ownership. Ownership was not in issue. That question is open to be thrashed out in a title suit when presented before the civil court with respect to the corpus. The court at present is concerned only with possession and whether the findings on the point are in order as to who has it. There is sufficient evidence on record of the present suit to conclude that the plaintiff was in exclusive possession of the property and party was therefore entitled to the grant of a simple injunction protecting him against unlawful and forcible dispossession except by resort to the due process of the law.

10. Thus, there is found nothing in this appeal worth consideration and I would have no hesitation in dismissing the same but without costs. No substantial question of law emanates from the materials on record. The appeal is dismissed. The file be consigned to the record room.

(RAJIV NARAIN RAINA)
JUDGE

04.08.2015
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