

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

**RSA No.6452 of 2014(O&M)
Date of Decision : 21.4.2015**

Jai Bhagwan and ors.

.....Appellants

Versus

Murti Devi

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Vishal Nehra, Advocate
for the appellants.

GURMIT RAM, J.

This regular second appeal has been preferred by the appellants/defendants against the judgment and decree dated 13.2.2012 passed by the learned Civil Judge (Junior Division), Gohana vide which suit of the plaintiff for permanent injunction was decreed and the judgment and decree dated 21.11.2014 passed by the Court of learned District Judge, Sonapat vide which the appeal preferred by the appellants against the above said judgment and decree dated 13.2.2012 was dismissed.

2. The case of the present respondent (plaintiff before the learned trial Court) in brief was that her husband namely Man Singh alias Maman was in possession of the property in dispute measuring 6 Marlas in total as its owner. After his death, the plaintiff along with her children came in possession of this property being its owner. They are using this property for domestic purposes. The defendants (the present appellants) who had no right, title or interest in the suit property were trying to dispossess the plaintiff from the suit property forcibly and illegally and hence the present suit.

3. On notice defendants appeared and filed written statement

taking preliminary objection regarding maintainability of the suit. On merits, it was admitted that Maman, the husband of the plaintiff was the owner in possession of the suit property. In this regard, it was further their plea that suit property was sold by said Maman to one Dhara, who further along with his son had sold the same to the defendants on 18.9.1991 for a sale consideration of Rs.4,000/-. The entry in this regard was duly made in the BAHI. Now they are in possession of this property as the owners since the date of its purchase, which they are using for domestic purposes.

4. Replication was filed and issues were framed.

5. The learned trial Court after hearing the counsel for both the parties and perusing the record as well decreed the suit of the plaintiff vide the impugned judgment and decree dated 13.2.2012.

6. Being not satisfied with the findings of the learned trial Court, the defendants preferred an appeal before the learned District Judge, Sonapat which was dismissed vide the impugned judgment and decree dated 21.11.2014.

7. Being aggrieved from the findings recorded by both the Courts below, the appellants-defendants have approached this Court by filing the instant regular second appeal.

8. Learned counsel for the appellants was heard and record as available on the file was also perused.

9. Learned counsel for the appellants contended that the findings recorded by both the Courts below are illegal, null and void being against the facts on the file and also contrary to the law. It is further his contention that the learned Lower Appellate Court has dismissed the appeal of the appellants without applying its judicious mind independently and also without making the re-appreciation of the facts on the record. It is also his

contention that the respondent-plaintiff had failed to establish her possession over the property in dispute since she could not tell about the directions as well as dimensions of the suit property and both the learned Courts below have wrongly recorded the findings in her favour without taking proper notice of this fact. Further he has prayed that the judgments and decrees passed by both the Courts below be set aside by accepting this appeal with a further prayer to dismiss the suit of the plaintiff.

10. Now let me see the evidence of both the parties in order to find out as to whether the above contentions of learned counsel for the appellants are tenable or not. In this case the plaintiff herself appeared in the witness-box as PW1 and tendered in her evidence her duly sworn affidavit Ex.PW1/A along with copy of Aks-sijra Ex.P1 and copy of jamabandi Ex.P2. On the other hand, the defendant No.1 - Jai Bhagwan appeared as DW2 and brought on record his duly sworn affidavit Ex.DW2/A. Further the defendants also examined DW1 – Ranbir, DW3 – Om Parkash and DW4 – Bijender, whose duly sworn affidavits were brought on the record as Ex.DW1/A, Ex.DW3/A and Ex.DW4/A, respectively. Further Ex.D1 and Ex.D2 the copies of BAHI containing some entries were also tendered in evidence.

11. It is admitted by both the parties that Man Singh alias Maman, the husband of the respondent-plaintiff, was the owner in possession of the property in dispute. It was the case of the present appellants – defendants that said Man Singh @ Maman had sold the suit property to one Dhara and that subsequently they had purchased the said property from said Dhara and his son Ranbir. In order to prove the fact that they had purchased the suit property from Dhara and his son, the appellants – defendants had brought on the record photocopies of the BAHI Ex.D1 and Ex.D2 allegedly containing entries regarding sale transaction made by said Dhara and his son in favour of the

present appellants of the land in dispute. The sale consideration as alleged by the appellants-defendants was Rs.4,000/-. It is the basic law that if any sale transaction of any immovable property is to be made beyond the value of Rs.100/-, then the alleged instrument of sale transaction i.e. sale deed is required to be compulsorily registered. So far the entries in above-said BAHIS Ex.D1 and Ex.D2 are concerned, these carry no value in the eyes of law with regard to transfer of any title in respect of suit property in favour of present appellants. Such like documents could be used for collateral purposes only i.e. regarding possession etc. But in both these documents, it is nowhere recorded that possession of the suit property was delivered to present appellants-defendants while making the alleged sale transaction by Dhara and his son in favour of the present appellants. So both these documents do not serve any purpose for the present appellants-defendants qua the property in dispute. When it is admitted that initially husband of the respondent – plaintiff was in possession of the property in dispute as owner, then it was the duty of the appellants-defendants to bring on the record cogent evidence to prove that possession of the suit property was delivered to them at the time of making entry in the BAHIS Ex.D1 and Ex.D2 and that they are in possession of the same continuously till today, which they had failed to do in this case. Then there is no connecting evidence as to whether the property which is mentioned in the documents Ex.D1 and Ex.D2 is the same property which is now in dispute in this case. If the respondent-plaintiff had failed to tell about the directions/dimensions of the suit property, then it does not mean that she is not in possession of the property in dispute at the spot.

12. In the light of the above discussion, there is nothing found wrong on record to hold that the learned Lower Appellate Court has not applied its judicious mind or that it had failed to re-appreciate the facts and evidence

properly while passing the impugned judgment and decree dated 21.11.2014. There is also nothing on record to say that the findings recorded by both the Courts below are either perverse or are not based on the evidence. So, the above-said contentions of learned counsel for the appellants are held to be not tenable and same are declined.

13. Then the learned counsel for the appellants has contended that both the learned Courts below have recorded the finding with regard to title 'that respondent – plaintiff is in possession of suit property as its owner which is unwarranted'. In this regard, it is his contention that it was a simple suit for injunction and Courts are only to determine in such like cases as to which party is in possession of the property in dispute at the spot. In support of his contention, he has also relied upon case law as laid down in **Ramji Rai and another Versus Jagdish Mallah (Dead) through LRs and another, 2007(3) R.C.R.(Civil) 680.**

14. I have carefully gone through both the impugned judgments and decrees and have found that both the Courts below have nowhere granted relief in the shape of declaration that respondent – plaintiff is the owner of the property in dispute and that she is in its possession as such. The mere recording in the body of judgment that respondent – plaintiff is in possession of the suit property as the owner does not mean that the declaration has been granted that the respondent – plaintiff is the owner of the suit property. For the execution purpose, the Court is to see as to what has been granted in the relief clause of judgment. In the relief clause, both the Courts below have granted the relief of injunction to the respondent – plaintiff on the ground that she is in possession of the suit property on the spot whereby restraining the appellants-defendants from dispossessing her from the suit property forcibly and illegally. So the above cited case law has no bearing on the facts of this case.

The above contention of counsel for the appellants is also held to be misconceived.

15. In view of the above discussion, this appeal being meritless stands dismissed and disposed of accordingly. The judgments and decrees of both the Courts below in the instant appeal are hereby affirmed.

Since the main appeal has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

21.4.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No