

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.1454 of 2016 (O&M)
Date of Decision: 22.10.2016

Dial Kaur @ Gurdial Kaur

.....Petitioner

Vs

Baljit Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Saravpreet Singh Gurna, Advocate
for the petitioner.

Mr. B.P.S. Virk, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged order dated 08.01.2016 passed by Civil Judge (Jr. Divn.) Patiala, whereby suit under Section 6 of the Specific Relief Act (hereinafter to be referred as 'the Act') filed by the plaintiff/petitioner for recovery of possession of immovable property bearing *Khasra* No.1842 measuring 10 *biswas* was dismissed.

[2]. Brief facts as gathered from the record are that the Plaintiff/petitioner filed a suit on the ground that she had purchased the suit property from one Pal Singh vide registered sale deed dated 25.01.2005 for a total sale consideration of

Rs.52,000/- and since the time of purchase, plaintiff/petitioner was owner in possession of the suit property. On 30.01.2006, the defendant brought a tractor-trolley full of bricks to construct a wall in the suit property. The intended effort of the defendant in encroaching the suit property ultimately prompted the plaintiff/petitioner to file a suit for permanent injunction vide civil suit No.23 dated 31.01.2006. The defendant was restrained from interfering in the possession of the plaintiff and from dispossessing the plaintiff forcibly from the suit property bearing *Khasra* No.1842 by way of interim order. The suit was contested by the defendant on merits. Ultimately the suit was decreed by the trial Court on 16.07.2010. Defendant remained unsuccessful in the appeal before the lower Appellate Court as well.

[3]. On 11.08.2010, the defendant along with his henchmen and family members forcibly and illegally dispossessed the plaintiff from the suit property. Plaintiff, her husband and son were injured in that incident. The police did not take any action, despite the fact that the plaintiff and her family members were injured while they were sleeping and the defendant made trespass into the property by breaking down boundary wall over the suit property.

[4]. The suit was contested by the defendant by asserting

that he had purchased 25 *Bighas* of land through two sale deeds. One sale deed was executed by father-in-law of the plaintiff for the land measuring 10 *Biswas* and second sale deed was executed by Pal Singh, husband of the petitioner/plaintiff in the year 1995 and 1996 respectively. The sale deed executed by Pal Singh in favour of the plaintiff was claimed to be a paper transaction only. Defendant had purchased 10 *Biswas* of land from Hazara Singh father-in-law of the plaintiff vide sale deed dated 11.12.1995. Defendant had purchased 15 *Biswas* of land from Pal Singh husband of the plaintiff vide sale deed dated 02.08.1996. Defendant asserted that the possession of total 25 *Biswas* of land was handed over to him by Hazara Singh and Pal Singh at the time of execution of sale deed. Thereafter, defendant had constructed his house on the aforesaid 25 *Biswas* of land. Defendant became owner in the land owned by Hazara Singh and Pal Singh. The possession of the plaintiff was denied over *Khasra* No.1842 measuring 10 *Biswas*.

[5]. Defendant also asserted that the he had constructed his house after the sale deed executed by the husband of plaintiff in her favour. Father-in-law and husband of the plaintiff, were in the possession of *Khasra* Nos.1842 and 1843. After the sale in favour of defendant, possession was duly delivered to him. Defendant also asserted that under the garb of earlier

judgment and decree dated 16.07.2010, plaintiff intended to grab the property of the defendant. In fact on 12.10.2010, the plaintiff, her husband and her sons tried to take forcible possession of the land from the defendant. They were caught by the defendant and his family members at the spot and the Police was informed. They were arrested by the Police and FIR No.148 dated 14.08.2010 under Sections 458, 447, 511, 34 IPC was registered against them.

[6]. The defendant filed an appeal against the judgment and decree dated 16.07.2010 which was decided on 14.01.2011. The factum of alleged dispossession of the plaintiff was never informed to the lower Appellate Court, when appeal of the defendant was pending before the Court. The story of dispossession of the plaintiff on 11.08.2010 was coined unlawfully. Wrong entries were mentioned in the suit. In the earlier suit titled as Dial Kaur vs. Baljit Singh, the plaintiff did not mention the boundaries. No boundaries were mentioned in judgment and decree dated 16.07.2010. The defendant was in possession pursuant to the sale deeds of 1995 and 1996 executed by Hazara Singh and Pal Singh and he had constructed the house long back. Question of dispossession of the plaintiff on 11.08.2010 do not arise at all.

[7]. After completion of pleadings, both the parties went to trial on the following issues:-

- “1. Whether the plaintiff is entitled for the recovery of possession of immovable property under Section 6 of Specific Relief Ac, as alleged in the plaint? OPP*
- 2. Whether the suit of the plaintiff is not maintainable? OPD*
- 3. Whether the plaintiff has no cause of action, to file the present suit? OPD*
- 4. Relief.”*

[8]. Thereafter both the parties led their respective evidence on the aforesaid issues to prove their case.

[9]. After appraisal of the evidence, trial Court observed that the plaintiff did not mention about her household items at the time of dispossession. No photographs were produced in respect of belongings of the plaintiff and the demolished boundary wall of the suit property. The trial Court referred to the criminal case Ex.PG wherein chargesheet was framed against the defendant only under Sections 325, 323, 148, 149 IPC. Had the plaintiff been dispossessed by way of trespassing, the

chargesheet should have been drawn under Sections 452, 458, 447 IPC. The statement of the plaintiff Ex.D-5 on oath in the Court in respect of occurrence dated 11.08.2010 was contrary to the stand taken by her in the suit. She had deposed in the criminal proceedings that about 15-20 years ago, her father-in-law Hazara Singh had sold 15 acres of land to the defendant, but the defendant wanted to grab 25 *Biswas* of land instead of 15 *Biswa*. Her husband also sold the land which was in her name. The suit filed by the plaintiff was decreed and appeal filed by the defendant was dismissed. On 11.08.2010, when the plaintiff, her husband and son were watering the fields adjoining to the fields of defendant, then they felt danger from the defendant. The defendant-party encircled them and pulled them out of their courtyard. Defendant-party was duly armed with deadly weapons. Defendant also snatched gold earning of the plaintiff and by giving injuries to the plaintiff and her family members, they were forcibly dispossessed. Trial Court noticed the contradictions in the statement of the plaintiff and drew inference against the plaintiff. On the basis of aforesaid reasoning, the suit was dismissed.

[10]. I have heard learned counsel for both the parties.

[11]. Learned counsel for the petitioner vehemently

contended that basic dispute between the parties is with regard to the *Khasra* Nos.1842 and 1843. *Khasra* No.1842 is in possession of the plaintiff/petitioner and *Khasra* No.1843 is in possession of the respondent. In the sale deed dated 11.12.1995 executed by Hazara Singh in favour of defendant, the property involved was bearing *Khewat/Khatauni* No.184/509, *Khasra* No.2627/1843 min (0-10) *Biswa*. The said land was sold by Hazara Singh in favour of Baljit Singh (defendant) for a consideration of Rs.20,000/-. Similarly in the sale deed dated 02.08.1996 executed by Pal Singh in favour of defendant, the land involved was bearing *Khewat/Khatauni* No.184/509, *Khasra* No.2627/1843 min (0-15) *Biswa* for a total sale consideration of Rs.40,000/-.

[12]. On the strength of aforesaid two sale deeds, learned counsel for the petitioner contended that the defendant purchased land in *Khasra* No.1843 only and he had nothing to do with the land comprised in *Khasra* No.1842. In the civil suit filed by the plaintiff against the defendant for permanent injunction, the suit land involved was comprised in *Khewat* No.214, *Khatauni* No.597, *Khasra* No.1842 measuring 10 *Biswas*. The said suit was decreed vide judgment and decree dated 16.07.2010 by recording positive findings of fact in para No.13 of the judgment in the following manner:-

“13. I have heard and considered the respective contentions of learned counsel for the parties. It is the case of the plaintiff that she is owner in possession of the suit land comprised in Khewat No.214 Khatauni No.597 having Khasra No.1842 measuring 10 biswas. On the other hand, it is the contention of the defendant that he had purchased the land falling in Khasra No.1843. Perusal of the sale deed dated 25.1.2005 Ex.P-1 shows that the plaintiff had purchased the suit land falling in Khasra No.1842 from Pal Singh. Perusal of the jamabandi Ex.P2 also shows that the plaintiff is owner in possession of the suit land falling in Khasra No.1842 Ex.P3 and Ex.P4 are the mutation duly entered to this effect in favour of the plaintiff. On the other hand, the defendants have placed reliance upon Ex.D2 which is sale deed duly executed by Pal Singh in favour of the defendant Baljit Singh in the land falling in Khasra No.1843. The plaintiff has filed a suit to restrain the defendant from interfering in the possession of the suit land falling in Khasra No.1842. The land falling in Khasra No.1843 as alleged by the defendant has never been in dispute. Therefore, the plaintiff has proved to be the owner in possession of the suit land falling in Khasra No.1842 and the defendant is restrained from interfering in the peaceful possession of the plaintiff and from dispossessing the plaintiff by use of force from the land comprised in Khewat No.214 Khatauni No.597 and Khasra No.1842 measuring 10 biswas situated in vilalge Dakala Tehsil and District Patiala. Hence, Issue No.1 is decided in favour of the plaintiff and against the defendant.”

[13]. After recording the aforesaid findings in respect of rival claims of the parties viz-a-viz. *Khasra* Nos.1842 and 1843, the suit came to be decreed and the defendant was restrained from interfering in the peaceful possession of the plaintiff and also from dispossessing the plaintiff by use of force from the land in *Khewat* No.214, *Khatauni* No.597 and *Khasra* No.1842 measuring 10 *biswas*. The factum of suit having been decreed by the trial Court and dismissal of the appeal against the said judgment and decree filed by the defendant before the lower Appellate Court and dismissal of the same were duly pleaded and brought on record before the trial Court. Trial Court even after noticing the aforesaid fact, dismissed the suit primarily on the contradictions in the statement of the plaintiff on two different occasions and the alleged non-mentioning of utensils at the time of dispossession and trespassing over the suit land by the defendants.

[14]. In my considered opinion, the aforesaid discrepancies were not sufficient to dilute the firm finding of fact recorded by the trial Court in judgment and decree dated 16.07.2010. Plaintiff was found to be in established possession of *Khasra* No.1842. The suit in question was filed in respect of land bearing *Khasra* No.1842. The factum of plaintiff being in possession over *Khasra* No.1842 had already attained finality in

view of earlier judgment and decree dated 16.07.2010 passed by the trial Court in favour of the plaintiff and the same was upheld even in appeal before the lower Appellate Court.

[15]. In view of aforesaid, I do not see any reason for not holding that the plaintiff was in possession of *Khasra* No.1842 before the occurrence dated 11.08.2010. The trial Court has failed to dislodge the findings recorded by the civil Court in respect of *Khasra* No.1842 which was proved to be in established possession of the plaintiff. Merely by not alleging therein throwing of household items at the time of dispossession and by not taking photographs of the scattered goods and also by not charge-sheeting the defendant for the offences under Sections 452, 458, 447 IPC and the alleged discrepancy in the statements of the plaintiff on two different occasions, the finding of possession of the plaintiff over *Khasra* No.1842 by way of judicial verdict dated 16.07.2010 cannot be subsided.

[16]. In view of aforesaid I accept the present revision petition and hold that the plaintiff was in established possession of *Khasra* No.1842 on the strength of civil Court decree dated 16.07.2010 passed in a suit for permanent injunction filed by the plaintiff and the same was upheld even in appeal before the lower Appellate Court vide judgment and decree dated

14.01.2011. Plaintiff is entitled to restoration of possession in a suit under Section 6 of the Act. With these observations, this revision is allowed.

October 22, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No