

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 859 of 1988 (O&M)

Date of Decision: 13.05.2016

Ravinder Kaur (Dead) through LRs.

... Appellant(s)

Versus

Kalyan Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. S.S.Deol, Advocate
for the appellant(s).

Mr. Deepak Basatia, Advocate,
Amicus Curiae for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the plaintiff, against the judgment & decree dated 19.2.1988, passed by learned Additional District Judge, Patiala, whereby judgment & decree dated 4.3.1987, passed by learned Sub Judge IInd Class, Patiala was set aside.

For the sake of convenience, parties are being referred to as per their status before the Court of first instance.

Relevant facts of the case that plaintiff filed suit against the defendants for possession of land measuring 351 square yards situated

opposite Modi College on Rajwaha Road, Patiala and as fully detailed in the plaint. As per plaintiff, she had purchased land bearing khasra No. 4736/316/1 measuring 852-1/3 square yards from Sajjan Singh vide registered sale deed dated 6.9.1978. The possession was delivered to the plaintiff by the venders. In the year 1981, defendant No.1 filed suit for permanent injunction against the husband of plaintiff restraining her from interfering in his possession. A temporary injunction was granted and under the garb of that order of permanent injunction, defendant No. 1 took forcible possession of the suit land. Subsequently, that suit got dismissed on 18.9.1982. The defendants are continuing in possession of the suit land, though they have no right or title to the suit land. Plaintiff requested the defendants to hand over possession of the suit land to her but to no avail and as such necessity of the suit.

Defendants contested the suit *inter alia* taking the plea that they are in possession of the suit land since 1970 and because of that, suit for permanent injunction was filed against husband of the plaintiff. Defendants denied the averment that under the garb of temporary injunction order, issued by the Court in earlier civil suit for permanent injunction, defendants had taken unauthorized possession. As per defendants, they are in possession of the suit land since 1970 and their possession has ripened into ownership by lapse of time and plaintiff has got no right, title or interest in the suit land. Plaintiff and her husband got the land demarcated from the revenue authority and every time the plot was found to be correct according to the sale deed. However, plaintiff was trying to take forcible possession of the suit land from the defendant in connivance with the police. Otherwise, the claim of

plaintiff was time barred and suit of the plaintiff deserves dismissal.

On these facts, the Court of first instance settled the issues and parties have led their respective evidence. After recording of the evidence and appreciation thereof, the Court of first instance decreed the suit of the plaintiff for possession of land measuring 351 square yards bearing khasra No. 4736/316/1 situated in the revenue estate of Patiala. Defendants preferred first appeal and first Appellate Court reversed the findings of the Court of first instance and judgment & decree passed by the Court of first instance was set aside and suit of the plaintiff was dismissed. Being aggrieved of the judgment & decree dated 19.2.1988 by the first Appellate Court, appellant approached this Court by way of present regular second appeal.

After hearing learned counsel for the parties and perusal of the record, this Court is of the view that following substantial question of law is involved in the present case:

“Whether the Court below recorded erroneous findings on the basis of report of the Local Commissioner and the said findings are liable to be set aside?”

While arguing on the substantial question of law, learned counsel for the appellant took the plea that learned trial Court had recorded detailed findings on the basis of oral as well as documentary evidence. However, learned trial Court discarded the demarcation report Ex.D1/A. But the first Appellate Court reversed the findings mainly by placing reliance upon the report of Local Commissioner. The said findings are incorrect.

Learned counsel for the appellant also submitted that one of the reasons for

first Appellate Court to accept the report of Local Commissioner was that no objection was raised by the present appellant, whereas the same is incorrect. Learned counsel for the appellant also submitted that report of Local Commissioner Ex.D1/A makes it ample clear that Local Commissioner made report that demarcation could not be done because of non-availability of record of consolidation and *Musavi*. More so, no pucca burji was available at the spot. The first Appellate Court relied upon the report of Local Commissioner, which is practically no report. Otherwise, defendants have come with the plea of adverse possession. But they failed to prove the basic ingredients of adverse possession. It is settled proposition of law that adverse possession is to be pleaded and proved strictly. Similar view has been taken by Hon'ble the Apex Court in ***Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others* 2009(16) SCC 517**. But the first Appellate Court recorded the findings on the same. More so, law on the point is settled that if any party takes the plea of adverse possession, that by implication means that the opposite party is the owner of the property and the party claiming adverse possession has become owner of the property because of adverse possession. In case, the plea of adverse possession was taken by the defendant was not proved, plaintiffs are admittedly owner of the suit property and suit of the plaintiff was required to be decreed qua land bearing khasra No. 316/1 measuring 852 square yards of land. But the first Appellate Court recorded erroneous findings.

Learned counsel for the respondents submitted that appellants are already in possession of the property, which is more than their share and with the connivance of police, they wanted to take forcible possession of the

land belonging to the respondents. Appellants are in possession of 956 square yards of land, although they had purchased land measuring 852 square yards on the basis of sale deed dated 6.9.1978. The first Appellate Court has rightly recorded the findings and set aside the judgment & decree passed by the Court of first instance. Thus, present appeal is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the respondents were not appearing continuously and in those circumstances, this Court passed order dated 22.4.2015 for appointment of Amicus Curiae to assist the Court on behalf of the respondents. It shows that the respondents have already lost their interest in the litigation.

At any rate, taking the case from facts, material and evidence available on the file, certain facts are not disputed that plaintiffs have purchased land bearing khasra No. 316/1 measuring 852-1/3 square yards from Sajjan Singh son of Mehtab Singh vide registered sale deed dated 6.9.1978 and the possession was delivered by the defendants. It was the case of the plaintiff that defendants took forcible possession of the land under the garb of temporary injunction order issued by the Court in another suit and thereafter, got the suit for permanent injunction dismissed on 18.9.1982 and they are still in possession of the suit land. The Court below appointed Naib Tehsildar, Patiala as Local Commissioner who had submitted his report Ex.D1/A after visiting the spot and the said report is most crucial document on the file because the Court of first instance recorded the findings by discarding the report of Local Commissioner, whereas first Appellate Court

accepted the appeal, thereby accepting the report of Local Commissioner. A perusal of the report of Local Commissioner itself makes it clear that it was observed by Local Commissioner that complete record of consolidation was not available and in the absence thereof, complete report could not be given. Local Commissioner also observed that there was no “pucca burji” on the spot. There was only one map with the Patwari, which is not verified by any independent source. That way, report of the Local Commissioner was that demarcation could not be done as per instructions issued by the Financial Commissioner, Punjab and duly approved by this Court regarding demarcation of the land. But the first Appellate Court wrongly placed reliance upon such a report, which resulted into erroneous findings and the same are liable to be set aside.

In view of above, the substantial question of law, framed in this case, stands answered in favour of the appellant and against the respondents. Resultantly, present appeal is accepted and judgment & decree dated 19.2.1988, passed by learned Additional District Judge, Patiala is set aside and judgment & decree, passed by the Court of first instance, stands upheld.

(Shekher Dhawan)
Judge

May 13, 2016
“DK”