

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

RSA No.649 of 1991

Date of Decision: 11.07.2016

Gokal Chand

...Appellant

Vs

Sham Sunder Misra and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Ankita Sambyal, Advocate
for the appellant.

Mr. Kamal Sharma, Advocate
for the respondents.

1. *Whether Reporters of local papers 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?*

RAJ MOHAN SINGH, J.

[1]. Plaintiff-appellant has filed this Regular Second Appeal against judgment and decree dated 19.02.1991 passed by Additional District Judge, Narnaul whereby judgment and decree dated 31.10.1988 passed by Sub-Judge Ist Class, Mahendergarh was set aside and the suit was dismissed in appeal.

[2]. Brief facts as gathered from the record are that the plaintiff-Gokal Chand filed suit for permanent injunction to the

effect that plaintiff and proforma defendant No.5 were residing in the suit land having purchased the same from one Kamal Nain son of Madan Mohan vide registered sale deed dated 2002 BK. Plaintiff and proforma defendant No.5 were using the suit land as *Chowk* since then which was measuring 9' x 20' as shown in red colour in the site plan attached with the suit.

[3]. Plaintiff alleged that the defendants had no concern with the suit land and they wanted to dispossess him from the *Chowk* forcibly by constructing the boundary and by tethering their cattle and also by placing firewood in the suit property. The suit for permanent injunction was filed with the allegations that the defendants No.1 to 4 did not desist from their act and on their refusal plaintiff sought permanent injunction.

[4]. Defendants No.1 to 4 contested the suit by denying the suit land as *shamlat Chowk*, nor the same was being used by the plaintiff and proforma defendant No.5 as alleged. Defendants No.1 to 4 claimed their possession over the suit property, having purchased by father of defendant No.1 Brij Nandan Bhargawa vide registered sale deed dated 21.11.1939. Suit was claimed to be not maintainable against the defendants being owner. Besides challenging the suit on other grounds like *locus standi* and limitation, defendants No.1 to 4 claimed dismissal of the suit with special costs.

[5]. After filing of replication, the parties went to trial on the following issues:-

- “1. Whether suit property is shamlat chowk as claimed by the plaintiff and the contesting defendants have got no concern with it? OPP*
- 2. Whether plaintiff has locus standi to bring the suit? OPP*
- 3. Whether plaintiff is estopped from bringing the present suit as alleged in additional objection No.3 of the written statement? OPD.*
- 4. Whether contesting defendants have been in possession of the suit property for the last more than forty four years as alleged in paragraph No.4 of the written statement? If so to what effect? OPD.*
- 5. Whether the suit is barred by limitation? OPD.*
- 6. Whether the suit is false and frivolous and contesting defendants are entitled for compensatory costs? OPD*
- 7. Relief.”*

[6]. One more issue was framed on 22.11.1984 to the following effect:-

- “1A. If issue No.1 is not proved, whether defendants are exclusively owners in*

possession of the disputed site, if so, to what effect? OPD”.

[7]. Plaintiff himself appeared as PW-5 and claimed the property to be *shamlat Chowk* owned by him on the basis of sale deed of 2002 BK from Kamal Nain. The sale deed Ex.PW-5/A and the site plan Ex.PW-5/B were claimed to be true transactions. Inderpal, Advocate while appearing as PW-1 proved the report Ex.PA which was prepared by him after spot inspection. Rameshwar Dass PW-2 demarcated the suit land. Budh Ram PW-3 deposed regarding the suit property as the courtyard of their house. Jaswant Singh PW-6 brought the copies of the original document.

[8]. On the other hand Birdu Ram appeared as DW-1 and one Surender Kumar while appearing as DW-2 stated about ownership of Sham Sunder for the last 30/35 years and the land in question was being used as storage of firewoods and some trees were also planted in the suit land. Jai Dayal DW-3 also deposed in respect of ownership of Sham Sunder and his possession thereof. Chander Prakash DW-4 proved the copy of sale deed DW-4/A and so as Y.K. Vashisht appeared as DW-5 and Krishan Kumar appeared as DW-6, who also proved Ex.DW-6/A and the defendant Sham Sunder while appearing as DW-7 deposed about his being owner in possession of the site

in question having purchased on 21.11.1939. The defendant also deposed that eucalyptus trees were planted in the disputed property.

[9]. After appraisal of the evidence, trial Court decreed the suit vide judgment and decree dated 31.10.1988, however the said judgment and decree was reversed by the lower Appellate Court vide judgment and decree dated 19.02.1991. That is how the present appeal came to be filed before this Court.

[10]. I have heard arguments of both the sides and have also perused the record.

[11]. Though no substantial question of law has been framed in the appeal, however this Court proceeded to consider the following substantial questions of law:-

- “1. Whether in a suit for permanent injunction rival claim based on title has any bearing on actual possession of a party over the suit property?
2. Whether report of Local Commissioner is conclusive and of evidentiary value in the absence of any objection filed against it?”

[12]. First of all, it has to be noticed that the plea of the plaintiff being in possession was based on the alleged title of the property having purchased the same vide sale deed dated 2002

BK. Even after alleged purchased, the issue No.1 was to the effect that whether the suit property was *shamlat Chowk* which has it own meaning in the domain of use of the property. *Shamlat Chowk* itself was a factor to be considered by the Courts below that the suit property was being used by the stakeholders and not by the plaintiff exclusively to the ouster of other co-sharers. On the other hand, the defendants No.1 to 4 have staked their claim on the basis of sale deed dated 21.11.1939 i.e. the date prior to the property allegedly purchased by Sat Narain in the year 1946. Both the parties have staked their claim regarding title on the basis of aforesaid sale deeds and based on such title, the plaintiff filed the suit for permanent injunction.

[13]. The property was allegedly purchased by Sat Narain from Kamal Nain in the year 2002 BK which on necessary calculations came to the year 1946 A.D. The property purchased by Jagan Nath father of defendant No.1 from Brij Nandan Bhargawa was claimed to be purchased on 21.11.1939 i.e. the date prior to the purchase of the property by Sat Narain from Kamal Nain. In such a situation, the site plan Ex.D-1 would be a relevant piece of evidence for deciding the controversy regarding the alleged *Chowk* as claimed by the plaintiff. The sale deed of the defendant Ex.DW-4/A was proved by Chander

Prakash DW-4/A. Y.K. Vashisth, Advocate also appeared as DW-5 and proved the certified copy of the sale deed.

[14]. Evidently, both the parties came forward with the title based on respective sale deed. The execution of sale deeds with reference to scribe and attesting witnesses could not be proved by either side. Mere exhibition of documents cannot dispense with the proof of execution. In order to appreciate the factum of possession over the suit property, the title based on sale deeds was not consequential. The plaintiff was to stand on the strength of his own case and he could not extract weakness of defendants' case to his credit.

[15]. First of all, site plan Ex.PW-5/B adduced by the plaintiff would show that the same was part of sale deed Ex.PW-5/A vide which Sat Narain had allegedly purchased the property in the year 1946. Perusal of the site plan would show that the boundaries were not tallying with the boundaries mentioned in the plaint. The boundaries as depicted in the sale deed Ex.PW-5/A were not corresponding to the boundaries shown in the site plan Ex.PW-5/B. In the sale deed Ex.PW-5/A towards North it was mentioned 'Araji Uftada Miser Jagan Nath and latrines of Budh Ram Mahajan, whereas in the site plan Ex.PW-5/B towards North 'Araji Uftada Miser Jagan Nath and latrines of Budh Ram and Sat Narain and a Rest House was shown.

Towards West in the sale deed Dukanat Bazar was mentioned whereas in the site plan towards West a Sahan, Kitchen and some other properties were described before the Dukanat Bazar. Perusal of the plaint would reveal that towards West of the disputed property, Haveli of plaintiff was mentioned. All these factors in the context of boundaries viz-a-viz. plaint and site plan of the plaintiff would show that the dimensions were materially different in both the documents. Suit property was allegedly purchased by Sat Narain in the year 1946 was subsequent to the property allegedly purchased by father of the defendant.

[16]. Even as per the site plan Ex.D-1 submitted by the contesting defendants pursuant to sale deed Ex.DW-4/A the corresponding boundaries as shown in the plaint were on different parameters. In the plaint towards East of the disputed property a common passage was shown whereas in the site plan Ex.D-1 of the defendants houses of Bansidhar and Budhumal Mahajan were shown. Towards West of the disputed property Haveli of Gokal Chand and Shanker Lal were mentioned whereas in the site plan Ex.D-1 houses of Mushi Kanwal Sen were shown. Similarly in the plaint towards North of the property there was a common passage and latrines of Gokal Chand and Shanker Lal whereas in the site plan Ex.D-1 *Sahan*

was shown towards North of the disputed property. Similarly South of the property open space of Jagan Nath was mentioned whereas in the site plan Ex.D-1 there was Pukhta Haveli of Hira Lal etc. towards South of the property. Perusal of both the site plans attached with the respective sale deeds had different configurations/dimensions viz.-a-viz. the averments made in the plaint.

[17]. Learned counsel for the appellant relied upon **Raja Ram vs. Ram Sarup, 1979 PLJ Page 12, M/s Roy and Co. and another vs. Smt. Nani Bala Dey and others, AIR 1979 Calcutta Page 50, Chandan Mull Indra Kumar and others vs. Chiman Lal Girdhar Das Parekh and another, AIR 1940 Privy Council 3** and **RSA No.1524 of 2014** titled as **Gurmeet Kaur and another vs. Anil Kumar and others decided on 27.03.2015.**

[18]. Perusal of the aforesaid precedents would reveal that there cannot be any dispute with regard to the proposition enunciated in the aforesaid judgments. In the instant case, report of Local Commissioner was not discredited by the Courts below, but it was the appreciation which tilted in favour of the defendants No.1 to 4. Even in the report of Local Commissioner plantation of flower trees and plants were mentioned which was corroborated by other piece of evidence on record. The Local

Commissioner was not required to collect any evidence for either of the party and was not supposed to mention about possession of either of the party. The material collected by the Local Commissioner was lawfully appreciated with other material on record by the lower Appellate Court to hold that as per the report of the Local Commissioner itself possession of the defendants No.1 to 4 was emerging on the site and even the witnesses of the defendants clearly admitted in unequivocal terms that it was the defendants No.1 to 4 who were in possession of the suit land. In view of above the precedents cited by the learned counsel have to be simply explained in the light of the aforesaid discussion.

[19]. In view of rival claim based on title only a possessory right was required to be adjudicated between the parties. Local Commissioner was appointed by the trial Court, who submitted his report Ex.P-1 dated 14.09.1982. As per the report of the Local Commissioner there was one feet deep ditch in the shape of drain in the direction of North and East of the suit property so mentioned and some plants of two feet height were also found in the suit land. From the report of the Local Commissioner it was evident that some plantation was done which had grown up. The plea of the defendants that they had planted some flower plants and trees on the suit land was corroborated by the

report of the Local Commissioner to the extent of showing plantation of some plants and existence of grown up trees. The report corroborated the case of the defendants to the extent of showing flower plant of two feet height. Not only this the witnesses of the plaintiff had also admitted existence of flower plants in the property. PW-2 Rameshwar who even demarcated the suit property deposed in unequivocal terms that flower plants were in existence over the suit property and in his cross-examination he fairly admitted that suit property was in possession of the defendants No.1 to 4 and they had planted the flower trees. PW-3 Budh Ram also admitted the factum of plantation of flower plants by the defendants No.1 to 4 over the suit property. Possession of the defendants No.1 to 4 was admitted by the witnesses of the plaintiff.

[20]. In the light of aforesaid facts and evidence, the factum of possession of the defendants No.1 to 4 was writ large on the face of the record. Secondly the plea of the plaintiff himself that the suit property was a *shamlat Chowk* was not in consonance with his title based on sale deed. The person having purchased the property for consideration would not allow the property to be shown as *shamlat* i.e. common with others. It was not the case of the plaintiff that he along with others is co-sharer in *shamlat Chowk* and he was in exclusive possession of the same so as to

oust other co-sharers from its use. Concept of co-sharership was not pleaded. Even if, under issue No.1 the property was held to be *shamlat Chowk* (though evidence came forth), the case of the plaintiff would land nowhere in the absence of exclusive use and possession of *shamlat Chowk* by the plaintiff.

[21]. In view of above discussion, question No.1 as formulated by this Court has to be answered that possessory right at the instance of the defendants No.1 to 4 was demonstrated with reference to the evidence on record. Even the possession was admitted by the witnesses by the plaintiff. Plaintiff was to stand on his own legs and could not extract any benefit out of alleged weakness of the case of the contesting defendants.

[22]. As regards the second question the report of Local Commissioner was not conclusive even if, no objections were filed to the report. The Local Commissioner was not supposed to collect evidence for either of the party. The report of the Local Commissioner could have corroborated the case of the plaintiff, had the defendants No.1 to 4 deposed in his favour. PW-2 Rameshwar and PW-3 Budh Ram had totally demolished the case of the plaintiff by admitting the possession of the defendants No.1 to 4 over the suit property. Even the report of the Local Commissioner was not in consonance with the plea of

the plaintiff when the Local Commissioner found plantation of flower trees over the suit property as claimed by the contesting defendants. The dimensions as mentioned in both the site plans adduced by the parties with reference to the averments made in the plaint discredited the claim of the plaintiff to the hilt. Consequently the second substantial question of law has to be answered against the plaintiff.

[23]. On due consideration of pleadings and material on record, this Court is of the opinion that the lower Appellate Court was correct in appreciating the pleadings and evidence of the parties on record. No fault can be found in the judgment and decree passed by the lower Appellate Court. Consequently this appeal is found to be totally bereft of merits and the same is accordingly dismissed.

July 11, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE