

RSA No.5002-2001

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

RSA No.5002-2001 (O & M)

Date of Decision: 27.02.2016

Jagdish Prashad and another

... Appellant (s)

Versus

Jitender and another

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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 ?

Present: Mr. Tajinder Joshi, Advocate,
for the appellants.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate,
for respondent No.1.

Paramjeet Singh Dhaliwal, J.(Oral)

CM-8061-C-2015

The present application is for impleading the legal representative of deceased-Jitender (respondent No.1), who is stated to have expired. The legal representatives of deceased-Jitender is mentioned in para 3 of the application. It is stated that there is no other legal heir of deceased-Jitender except the person mentioned in the application.

RSA No.5002-2001

Heard.

Application is allowed, subject to all just exceptions. The person mentioned in the application is ordered to be impleaded as legal heir of deceased for the limited purpose of defending this appeal. Registry is directed to make necessary correction in the memo of parties.

RSA No.5002-2001

This regular second appeal of the plaintiff and proforma defendant is directed against the judgment and decree dated 26.04.1999 passed by learned Civil Judge (Jr. Divn.), Mahendergarh whereby suit for permanent injunction filed by appellant-plaintiff has been dismissed and against the judgment and decree dated 12.11.2001 passed by learned Additional District Judge, Narnaul whereby appeal filed by the appellants i.e. plaintiff and proforma defendant has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff filed the suit for permanent injunction with the averments that one Bishannath was owner of 3 kanals 2 marlas of land comprised in khasra No.22//17/2 situated within the revenue estate of Mahendergarh which includes the suit property measuring 3 marlas bearing khasra No.22//17/2/1/2/2/1/1. He sold the same to one Vijay Kumar on

RSA No.5002-2001

different times and Vijay Kumar further sold the same to different persons. With every sale and at the time of mutation, Tatima was prepared and a new number was allotted to the land sold. The land measuring 6 marlas sold by Bishannath to Vijay Kumar was allotted khasra No.22//17/2/1/2/2/1. Out of this 6 marlas, 3 marlas of land was sold by Vijay Kumar to Smt. Angoori Devi, mother of the plaintiff and proforma defendant vide sale deed dated 04.06.1982. Smt. Angoori Devi was allotted khasra No.22//17/2/1/2/2/1/1 (suit land). Smt. Angoori Devi transferred this khasra number to his sons i.e. plaintiff and proforma defendant No.3 vide judgment and decree dated 29.10.1994. The plaintiff prayed that defendant Nos.1 and 2 be restrained from interfering in his possession over the suit land and defendant No.2 be also restrained from granting permission to defendant No.1 for raising construction over the suit land.

Upon notice, defendant No.1 resisted the suit and filed written statement taking various preliminary objections. On merits, it was averred that 6 marlas of land was sold by Vijay Kumar to one Prabhudayal vide sale deed dated 05.06.1970, but no mutation on the basis of that sale was sanctioned. Out of 6 marlas of land, Prabhudayal sold 200 sq. yds of land to defendant No.1 vide sale deed dated 06.02.1989. Defendant No.1 claimed his possession over the suit land as absolute owner on the basis of that sale deed. It was also averred that some part of khasra No.17/2 was in possession of Smt. Angoori Devi and

RSA No.5002-2001

it was that portion which was purchased by her. He wanted to construct shop on the suit property, therefore, he moved application to get passed site plan from Municipal Committee. The plaintiff claimed two different properties under the same killa number. Other averments in plaint were denied and dismissal of suit was prayed for.

Defendant No.3 filed separate written statement admitting the claim of the plaintiff.

On the basis of pleadings of parties, the Court of first instance framed following issues:

- “1. Whether the plaintiff and proforma defendant No.3 are owner in possession of the suit property mentioned in title of the plaint and entitled for relief on injunction on the grounds mentioned in the plaint?OPP*
- 2. Whether the plaintiff has no locus standi to file the preset suit?OPD*
- 3. Whether the defendant No.1 is bonafide purchaser for consideration as alleged?OPD*
- 4. Whether the defendants are entitled to special costs under Rule 35-A CPC?OPD*
- 5. Relief.”*

After appreciating the evidence, the Court of first instance dismissed the suit vide impugned judgment and decree dated 26.04.1999 and came to the conclusion that the plaintiff is not in possession of the land in question. Feeling aggrieved, the plaintiff and proforma

RSA No.5002-2001

defendant preferred an appeal which has been dismissed. Hence, this regular second appeal.

Learned counsel for the appellants has referred to following substantial questions of law formulated in the grounds of appeal for consideration by this Court:

- (i) *Whether the alleged report of local commissioner can depict actual physical possession of a person?*
- (ii) *Whether in a suit for permanent injunction, question of title can be decided?*
- (iii) *Whether there exists material irregularities/illegalities in appreciation of the evidence and other circumstances of the case?*

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellants has vehemently contended that both the courts below have misread the evidence and there is a complete mis-appreciation of evidence. The findings of courts below that the property is already in occupation of the appellants which is situated at a different distance, are altogether erroneous. The local commissioner cannot independently decide the factum of possession. The defendant No.1 has taken the benefit of the alleged discrepancies in the boundaries. When there is a dispute regarding identity of property, the boundary shall prevail over and above the other description.

Per contra, learned senior counsel for respondent No.1 has

RSA No.5002-2001

vehemently opposed the contentions of learned counsel for the appellants and supported the impugned judgments and decrees. Both the courts below have concurrently held that the plaintiff is neither owner nor in possession of khasra No.22//17/2/1//2/2/1/1.

I have considered the rival contentions of learned counsel for the parties.

The Court cannot decide the possession on the sole basis of report of local commissioner. However, only to ascertain the existing position at the spot, Naib Tehsildar (Revenue) was appointed local commissioner, who visited the spot and submitted his report along with site plan (Ex.DW 10/B) and found one Sohan Lal in possession of the suit land bearing khasra No.22//17/2/1/2/2/1/1 and Angoori Devi in possession over a part of khasra No.22//17/2/1/1. The said Angoori Devi also filed a civil suit claiming her possession over the part of khasra No.22//17/2 which was found in her possession by the local commissioner. As such, the report of local commissioner finds support from the admission of Smt. Angoori Devi. In that suit, the land in her possession was purchased by her from Vijay Kumar, vide registered sale deed dated 04.06.1982 and she had raised construction over that land by obtaining sanction from the Municipal Committee on two different occasions. Both the courts below have concurrently held that it is not the suit land but some other part of khasra No22//17/2 which is in possession of Smt. Angoori Devi. It has also been rightly held that the

RSA No.5002-2001

plaintiff has no independent right in the suit property and he has claimed through his mother Smt. Angoori Devi by taking undue advantage of wrong *Tatima*.

Both the courts below have rightly held that the plaintiff has claimed his possession over khasra No.22//17/2/1/2/2/1/1, but gave boundaries of some other land, meaning thereby third party is in possession over the suit land. He has given the boundary of the area in the western side of house of Sohan Lal. Khasra No.No.22//17/2/1/2/2/1/1 is in possession of Sohan Lal.

Learned counsel for the appellants has failed to show that findings of fact recorded by the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the concurrent findings recorded by the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed.

Costs made easy.

27.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge