

Regular Second Appeal No.223 of 2011 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: September 02, 2016

1. R.S.A.No.223 of 2011 (O&M)

Dod Ram

...Appellant

Versus

Randhir Singh

...Respondent

2. R.S.A.No.286 of 2011 (O&M)

Dod Ram

...Appellant

Versus

Randhir Singh & another

...Respondents

3. R.S.A.No.1041 of 2011 (O&M)

Dod Ram & another

...Appellants

Versus

Randhir Singh & others

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Santosh Sharma, Advocate,
for the appellant in RSA Nos.223 & 286 of 2011.

Mr.Vaneet Soni, Advocate,
for the appellants in RSA No.1041 of 2011.
Mr.Chanderhas Yadav, Advocate,
for respondent-Randhir Singh in all the cases.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three Regular Second

Civil Suits bearing No.738 of 1997 titled as “Randhir Singh Versus Dod Ram” and 132 of 2001 titled as Dod Ram Versus Randhir Singh (hereinafter called as Suit No.1 and Suit No.2) and RSA No.1041 of 2011 arising out of decretal of Civil Suit No.59 of 2000 for recovery by way of damages (hereinafter called as “Suit No.3”).

Aforementioned Suit Nos.1 and 2 were consolidated. Suit No.1 was instituted by Randhir Singh for permanent injunction seeking restraint of forcible interference and dispossession at the instance of Dod Ram, who is alleged to have purchased the property from the Custodian Department, whereas in Suit No.2, Dod Ram sought declaration of having become owner with consequential relief of injunction.

Mr.Akshay Bhan, learned Senior Counsel assisted by Mr.Santosh Sharma, Advocate appearing on behalf of Dod Ram in two appeals submits that the property in dispute, i.e., S/29 was purchased in open auction held on 24.10.1966 and the sale certificate Ex.D33 dated 5.6.1967 was issued. Even the receipts and other documents have been brought on record. The Court below dismissed the suit on the premise that the previous suit bearing No.616 of 1991 seeking ejectment of Randhir Singh was dismissed on the ground that he was not found to be owner, but the Lower Appellate Court remained oblivious of the fact that while delivering the judgment and decree by the trial Court dated 23.8.1996, liberty was granted to claim ownership and possession against Randhir Singh in independent proceedings. In order to establish the ownership, entry in the register Ex.D21, Roznamcha Ex.D22 and sale certificate Ex.D33 have been proved on record. The Courts below were required to ponder upon the aforementioned documents for the purpose of declaration. In this regard, he

has drawn the attention of this Court to the findings rendered in the previous suit. The same read thus:-

“From the above, I am of the view when the plaintiff is not proved to be owner and in possession of the shop in dispute and there is a dispute between the ownership of the shop in dispute between the plaintiff and defendant no.4 which can only be decided by filing a separate suit by the plaintiff against the defendants, as such, thus the plaintiff has no right to serve a notice regarding the termination of tenancy to defendant no.1 to 3 without establishing his owner-ship and also establishing that shop in dispute was rented to defendant nos.1 to 3 by him and has received rent from them. Apart from the bald statement of the plaintiff himself, the plaintiff did not examine any of other witnesses in order to ascertain that premises in dispute was rented to the defendants and has been receiving the rent regularly. On the other hand, the defendant no.1 in order to prove that he has been paying the rent to one Sahi Ram, father of defendant no.4 and after his death to defendant no.4 examined Chand DW1, who has stated that shop in dispute was constructed by him of the instance of Sahi Ram, who brought a construction material. Similarly Babu Lal previous tenant has also stated that he has been paying the rent to defendant no.4 and never paid the rent to the plaintiff. As such, the plaintiff has no right to terminate the tenancy of defendant no.1 and 3. Accordingly both these issues are hereby decided in favour of the defendants and against the plaintiff.

Issue No.3

11. In view of findings given on issue no.1 and 2 in which it is held that plaintiff is neither owner nor in possession of the premises in dispute and he had no right to issue notice regarding the termination of tenancy of defendant no.1 to 3, as such, he is not entitled to recover Rs.200/- from defendant nos.1 to 3 for the use and occupation of the shop in dispute. Accordingly this issue is hereby decided in favour of the

defendants and against the plaintiff.

Issue no.4

12. In view of my findings given on issue no.1 and 2 that plaintiff has failed to prove his owner-ship and possession of the plot in dispute and also failed to prove regarding the receipt of rent from defendant no.1 to 3 and also failed to prove the tenancy between the plaintiff and defendant no.1 to 3, as such, he is estopped from filing the present suit his own act and conduct. Accordingly this issue is hereby decided in favour of the defendants and against the plaintiff.

Issue No.5

13. Onus to prove this issue was on the defendant. Ld.Counsel for the defendants did not advance any meaningful arguments on this issue that how the suit is bad for non-joinder and mis-joinder of necessary parties. Accordingly this issue is hereby decided in favour of the plaintiff and against the defendants.

Issue No.6

14. In view of my findings given on issue no.1 and 2, I hold that suit of the plaintiff is not maintainable in the present form because there is a dispute regarding owner-ship of the premises in dispute between the plaintiff and defendant no.4 and both the plaintiff and defendant no.4 have claimed their respective ownership and possession of the premises in dispute. As such before serving any notice regarding the termination of the tenancy, the plaintiff should file a suit for declaration regarding his owner-ship and possession against defendant no.4. Thus, I am of the view that suit of the plaintiff is not maintainable in the present form. Accordingly the issue is hereby decided in favour of the defendants and against the plaintiff.”

Mr.Bhan further submits that, in fact, Dod Ram had been put in possession of the property and, therefore, injunction granted by the trial

documentary evidence has been proved on record to establish the possession. In the consolidated suits, a Local Commissioner was appointed, who gave report that Dod Ram was in possession and even identity of the property, aforementioned, was established and site plans in Suit No.1 and Suit No.2 are identical, yet the Court below declined to grant declaration. Earlier suit, as noticed above, was filed on 27.11.1991 and appeal against the same was also dismissed vide judgment and decree dated 13.8.1997 and the present suit, i.e., Suit No.2 has been filed on 15.2.2001, thus, urges this Court that findings rendered by the Courts below vis-a-vis injunction and non-declining of declaration are not only perverse, fallacious but capricious and, therefore, prays for setting-aside of the same and for formulation of the following substantial questions of law:-

“1) Whether in the facts and circumstances of the present case, the Id.Courts below completely mis-read the evidence i.e. documentary as well as oral led by the present appellant/defendant which clearly shows and prove that the property in dispute forms part of property bearing no.S-29 allotted by the Custodian Department to the present appellant way back in the year 1966?

2) Whether in the facts and circumstances of the present case, the Id.Courts below completely ignored and overlooked the material and cogent evidence led by the present appellant from which it is amply clear that the appellant is owner in possession of property in dispute?

3) Whether in the facts and circumstances of the present case, the Id.Courts below have completely mis-read and ignored the legally admissible evidence produced by the appellant i.e. records of the custodian department, which clearly depicts and proves on record that the property in dispute forms part of property bearing no.S-29?

4) Whether in the facts and circumstances of the present

case, the impugned judgments and decrees passed by the learned courts below are legally sustainable in the eyes of law?

Mr.Chanderhas Yadav, learned counsel for respondent Randhir Singh submits that the institution of the previous suit, i.e., 616 of 1991 itself proved that Randhir Singh is in possession of the property, though an attempt was made to dispossess him, but the trial Court granted injunction vide order dated 3.9.1997. He further submits that Dod Ram has failed to establish the ownership, much less identity of the property and, therefore, rightly so the Courts below have declined the declaration. Even the suit was not maintainable in the absence of report of possession as the previous decree envisages the right to claim possession and, thus, urges this Court for dismissal of the appeals.

As regards the claim in RSA No.1041 of 2011, Mr.Vaneet Soni submits that both the Courts below have erred in not referring to the documentary evidence on record, i.e., amount incurred for repairing the shop and erecting tin shed. This factor ought to have been weighed in the mind of the Courts for granting the relief.

Per contra, Mr.Yadav, learned counsel for Randhir Singh submits that Dod Ram and his sons etc. had attempted to demolish the shop in dispute to some extent and an FIR in this regard was also registered and rightly so, the Lower Appellate Court has declined the relief.

I have heard the learned counsel for the parties and appraised the paper book.

The conceded position on record is that Dod Ram had instituted Civil Suit No.616 of 1991 seeking ejectment in which Randhir Singh was arrayed as defendant No.4. As noticed above, the Court below dismissed the

suit on the ground that Dod Ram had not been able to establish the

ownership. I am in agreement with the submission of Mr.Bhan. In my view, the trial Court as well as Lower Appellate Court have misread and misconstrued the findings and only read part of the same and held that Dod Ram was not the owner, but the liberty, as noticed above, escaped notice in order to establish the ownership. Sufficient evidence has been placed on record as mentioned above, i.e., Ex.D21, Ex.D22 and Ex.D33, much less report of the Local Commissioner identifying the property. In my view, the Courts below ought to have granted the declaration and, thus, the findings of the Court below in Suit No.2, i.e., 132 of 2001 are hereby set-aside being perverse and capricious. The question of law as noticed above are answered in favour of Dod Ram.

RSA No.286 of 2011 stands allowed.

I am of the view that institution of Civil Suit No.616 of 1991 itself establishes the possession of Randhir Singh and resultantly, the Courts below have granted the injunction. It is settled law that the person, who is in long and settled possession, cannot be dispossessed except in due course of law. This view of mine is fortified by Hon'ble Supreme Court in **Rama Gowda (D) by L.Rs Versus Mr.Varadappa Naidu (D) by L.Rs & another, 2004 (1) SCC 769.**

In my view, the Courts below have rightly exercised the discretion in granting injunction. I do not scribe to the submission of Mr.Bhan vis-a-vis Randhir Singh having not established his possession as previous pleadings can always be looked into for the adjudication of the lis in view of the provisions of Section 33 of the Indian Evidence Act.

Accordingly, findings given in Suit No.1, i.e., 738 of 1997 are hereby affirmed. RSA No.223 of 2011 stands dismissed.

As regards the claim of damages, I am of the view that the Lower Appellate Court rightly declined to interfere in claim for damages. No ground for interference is made out and findings of the Courts below in Civil Suit No.59 of 2000 are hereby affirmed. RSA No.1041 of 2011 stands dismissed.

It will not prevent Dod Ram to take appropriate measures in accordance with law. Both the parties shall be at liberty to take their legal pleadings in support of their respective claims and defence.

September 02, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No