

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 4537 of 2011 (O&M)

Date of Decision: July 11, 2016

Pavittar Singh and others

... Appellants

Versus

Ramji Dass and others

... Respondents

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

Present: Mr. Ankur Soni, Advocate,
for the appellants.

Mr. R.K. Chauhan, Advocate,
for respondent nos. 1 to 4.

Paramjeet Singh Dhaliwal, J. (Oral)

This regular second appeal has been preferred by the appellants/plaintiffs against the judgment and decree dated 15.06.2006 passed by learned Additional Civil Judge (Senior Division), Hoshiarpur, whereby suit filed by the plaintiffs for permanent injunction has been dismissed, as well as, against the judgment and decree dated 24.08.2011 passed by the learned Additional District Judge, Hoshiarpur whereby appeal preferred by the plaintiffs has also been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiffs filed a suit

for permanent injunction restraining the defendants from interfering in the possession of the plaintiffs as co-sharers over the property shown in red colour in the site plan forming part of Khasra No. 53R/13/2/1(1-2), 52R/30 (0-7), comprised in Khewat No. 396, Khatauni Nos. 442 and 444, situated in the revenue estate of Village Bajwara Kalan, Tehsil and District Hoshiarpur. It is alleged in the plaint that Hussan Singh was husband of plaintiff no.1 and father of defendants no. 2 to 5 and brother of plaintiff no.6. Pavittar Singh and Kuldeep Singh are also sons of Hussan Singh. They are living abroad. After the death of Hussan Singh, mutation relating to his inheritance was sanctioned in the names of the plaintiffs, Pavittar Singh and Kuldeep Singh in equal share. There are other khasra numbers as well where ownership of Hussan Singh is joint with his brother Joginder Pal. The defendants are in possession of eastern portion of khasra no. 53R/13/1 which is adjoining khasra no. 52R/13/2/1 and 53R/3 belonging to the plaintiffs. The defendants have set up latrine on the northern-eastern corner of khasra no. 53R/13/1 and also a bathroom on eastern line of this khasra number where it joins the north-western corner of khasra no. 52R/30. There is also a gate on the south-eastern corner of the house of defendants, which has been shown with green colour. Earlier, there was a wall from gate upto the north-western corner of khasra no. 52R/30, but now the defendants have removed the same. Defendants have set up a wall, which joins the north-western corner of latrine and south-eastern corner of bathroom and on that account, they have access to the property of the plaintiffs. Earlier an attempt was made by defendant no.1 to encroach upon the property in dispute and suit was filed by plaintiff no.1 against defendant no.1, keeping plaintiff no.6 as proforma defendant. Said suit was dismissed by the trial Court, but in

appeal, said suit was withdrawn with liberty to file a fresh suit on the same cause of action on 16.11.1999. Defendants no. 2 to 5 stacked certain bricks near the eastern line of their khasra number and were also entering the land in dispute. Hence, suit was filed.

Upon notice, defendants appeared and filed written statement taking preliminary objections regarding maintainability; locus standi; mis-joinder etc. On merits, it is alleged that defendant no.1 is owner in possession of suit property to the western side of khasra no. 52//13/2/1. It is denied that defendants have constructed latrine on north-eastern corner of khasra no. 53//13/1 and a bathroom on eastern line of this khasra number. The defendants are within their rights to raise boundary wall around their property.

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

- “1. *Whether the plaintiff is entitled for permanent injunction, as prayed for? OPP*
2. *Whether the plaintiffs have no locus standi to file the present suit?*
3. *Whether the plaintiffs have got no cause of action to file the present suit? OPD*
4. *Whether the suit is not maintainable under the law? OPD*
5. *Whether the site plan produced by the plaintiff is wrong incorrect, against the factual position at the spot? OPD*
6. *Whether plaintiffs have not come to the court with clean hands? OPD*
7. *Whether the suit is bad for mis-joinder of plaintiff no.6 and defendant no.1? OPD*
8. *Relief.”*

The Court of first instance, after perusal of the evidence led by

the parties, dismissed the suit vide judgment and decree dated 15.06.2006. Against that, plaintiffs preferred an appeal, which has also been dismissed by the learned lower appellate Court vide judgment and decree dated 24.08.2011. Hence, this second appeal.

I have heard learned counsel for the parties.

Learned counsel for the appellant has submitted that the following substantial questions of law formulated in para no.10 of grounds of appeal, arise for consideration in this second appeal:-

- “a) That the Courts below have wrongly concluded that the appellant is not in the possession of the property in dispute, therefore, whether the dismissal of the suit on this ground alone is valid?*
- b) That the Courts below have misread and misconstrued the evidence and the case law produced, therefore, whether the dismissal of the suit of the appellants is valid in the eyes of law?*
- c) Whether the Courts below have failed to deliver justice to the appellants by not giving them an opportunity to amend their suit and claim relief of possession in the alternative as the same is a settled proposition of law?*
- d) Whether the Courts below have failed to appreciate the case law cited and misconstrued the factual position whereby it has wrongly dismissed the suit of the appellants/plaintiffs?*

Learned counsel for the appellants vehemently contended that the appellants are owner of the property bearing Khasra No. 52-R/13/2/1(1-2), 52-R/30(0-7) and the land of defendants is of Rectangle No. 53-R, Killa No. 13/1. Learned counsel further contended that merely by placing of bricks, sand etc., it cannot be presumed that the defendants are in possession of the property in dispute. The findings recorded by both the Courts below

are against law and not sustainable in the eyes of law. Therefore, the impugned judgments and decrees are liable to be set aside.

On the other hand, learned counsel for the respondents contended that witnesses of the plaintiffs have themselves admitted in cross-examination that the defendants have taken forcible possession of the suit land and reference has been made to the statements of PW1 – Satpal, PW2 – Naresh Kumar and PW3 – Jagdev Singh. PW4 – Hans Raj has also admitted in his cross-examination that possession has been taken forcibly by the defendants.

I have considered the contentions raised by learned counsel for the parties and perused the record.

Admittedly, finding has been recorded that the defendants have taken forcible possession of the part of the land of the plaintiffs and the plaintiffs had earlier filed a suit for permanent injunction which was dismissed as withdrawn. Since categorical findings have been recorded by both the Courts below that defendants have taken forcible possession of the part of the land of the plaintiffs, then the only remedy available to the plaintiffs is to file a suit for possession after getting the demarcation of their land from the revenue authorities.

In view of above, I do not find any illegality or perversity in the impugned judgments and decrees of both the courts below. Concurrent findings of fact have been recorded by both the Courts below. Findings recorded by the Courts below are based on documentary evidence. Learned counsel for the appellants could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, said findings of fact do not

warrant interference in second appeal. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed.

July 11, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge