

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 2642 of 2012 (O&M)
Date of Decision: January 28, 2016

Balbir Singh

... Appellant

Versus

Gurudwara Parbandahak Committee and others

... Respondents

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

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. M.S. Dhami, Advocate,
for the appellant.

Mr. Rakesh Gupta, Advocate,
for respondents No.1, 3 and 4.

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellant/plaintiff against the judgment and decree dated 19.09.2008 passed by learned Civil Judge (Junior Division), Dasuya, whereby suit filed by the plaintiff for declaration and permanent injunction has been dismissed, as well as, against the judgment and decree dated 07.01.2012 passed by learned Additional District Judge, Hoshiarpur whereby appeal preferred by the appellant/plaintiff 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 plaintiff filed a suit for declaration and permanent injunction against the defendants on the ground that Ram Singh son of Buta was the proprietor of village Gambhowal prior to consolidation of holdings. The name of Ram Singh duly figured in Missal Hakiat of Village Gambhowal in Khata No. 118/137. Consolidation took place in the year 1960-61 and Ram Singh entered into possession of the property. Said Ram Singh died on 03.09.1964 and after his death, plaintiff came into possession of the property and since then, he is in possession. Plaintiff has paid Rs.1600/- to the Gram Panchayat in lieu of his possession vide receipt dated 12.08.1970. Defendants in connivance with revenue authorities got entered the name of Gurudwara Parbandhak Committee in the column of possession regarding 1 kanal of land. Gurudwara is at a distance of 20 karams from the property in question. The entire *mushtarka malkan* land of village is in possession of different proprietors as per their share including the plaintiff. Suit property is under cultivating possession of the plaintiff as owner being member of proprietary body of the village. Taking benefit of illegal and wrong entries in the name of the Gurudwara Parbandhak Committee, the defendants threatened to take forcibly possession of the property. Hence, suit was filed.

Upon notice, defendants appeared and filed written statement taking preliminary objections regarding maintainability; cause of action; time barred; estoppel, etc. On merits, it is alleged that Ram Singh was

resident of the village and the consolidation of holdings took place in the village, but the land is not in possession of Ram Singh or the plaintiff. Receipt dated 12.08.1970 is forged and fabricated document. The land in dispute was low lying area out of which one kanal of land was reclaimed and improved by Gurudwara Gambhowal a juristic person through its worshippers, sewa and Gurudwara Parbandhak Committee by incurring heavy cost. Plaintiff got entered wrong and fictitious entry in the revenue record of khasra girdwari in connivance with revenue officials. The incorrect entry was rightly corrected vide order dated 30.05.1994 of Assistant Collector 2nd Grade, Dasuya.

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

- “1. *Whether the plaintiff is owner in possession of the suit land?*
OPP
2. *Whether the plaintiff is entitled for declaration as prayed for?*
OPP
3. *Whether the plaintiff is entitled for permanent injunction as prayed for?* *OPP*
4. *Whether the suit of the plaintiff is barred by time?* *OPD*
5. *Whether the plaintiff is estopped to file the present suit by his own act and conduct?* *OPD*
6. *Whether the suit of the plaintiff is bad for mis-joinder of the parties?* *OPD*
7. *Whether the suit of the plaintiff is hit by the provision of Order 1 Rule 8 CPC?* *OPD*
8. *Whether the suit of the plaintiff is bad for non-joinder of the necessary parties?* *OPD*
9. *Whether the suit of the plaintiff is not properly valued for the purpose of court fee?* *OPD*

10. *Whether the defendants are entitled to special cost u/s 35-A of CPC? OPD*
11. *Whether the suit is not maintainable in the present form? OPD*
12. *Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, dismissed the suit vide judgment and decree dated 19.09.2008. Against that, plaintiff preferred an appeal, which has also been dismissed by the learned lower appellate Court vide judgment and decree dated 07.01.2012. 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.9 of grounds of appeal, arise for consideration in this second appeal:-

- “a) *Whether findings of the learned courts below on issue nos. 1 and 2 are altogether wrong and perverse to the oral as well as documentary evidence available on record?*
- b) *Whether the entire suit i.e. for 1K-4M can be dismissed on the basis of evidence relating to partial piece of land i.e. 1 Kanal?*
- c) *Whether manifest injustice has been done to the appellant by passing impugned judgments?”*

Learned counsel for the appellant contended that the findings recorded by both the Courts below are against law, without appreciation of facts 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 respondent

contended that both the Courts below have rightly decreed the suit.

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

There is categorical finding recorded by the Court of first instance that plaintiff is neither owner nor in possession of the suit property and defendants are in possession of the same. Perusal of the report of the Local Commissioner shows that there are trees standing in the property in question and there is no construction. The Local Commissioner has nowhere stated regarding possession of any party. Plaintiff-PW1 has specifically admitted that application for correction of khasra girdawari was filed by him and the same was dismissed and application filed by Gurudwara Sahib for correction was allowed. Plaintiff further stated that he has not filed any appeal against that order. Perusal of order passed by Assistant Collector Ist Grade shows that on receiving the application after visiting the spot, the possession was determined and necessary correction was made. The plaintiff is held not to be in possession of the property and defendants were in possession and accordingly the necessary correction was made.

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 appellant 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.

January 28, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge