

RSA No. 4407 of 2012

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4407 of 2012(O&M)

Date of Decision:24.5.2016

Avtar Singh and others

---Appellants

vs.

Paramjit Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sandeep Bansal, Advocate
for the appellants

Mr. Arun Takhi, Advocate
for the respondents

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

Rekha Mittal, J.

The present appeal has been directed against the judgment and

decree dated 2.6.2012 passed by the Additional District Judge (Ad hoc) Fast Track Court, Hoshiarpur whereby the appeal preferred by Joginder Singh plaintiff (since deceased) through his legal representatives against the judgment and decree dated 4.10.2008 passed by the trial court dismissing suit of the plaintiff, was allowed and as a result, suit of the plaintiff for declaration and injunction was decreed.

Joginder Singh son of Sant Ram (since deceased) represented by Paramjit Singh and others filed a suit for declaration that he is owner in possession of land measuring 07 marlas comprised in Khewat No. 197 Khatoni No. 258 Khasra No. 296 situated in village Dashmesh Nagar Tanda, Hadbast No. 24, Tehsil Dasuya, District Hoshiarpur on the basis of registered sale deed dated 17.6.1967 executed by Jagat Ram defendant No. 1 and father of defendants No. 2 to 6 namely Joginder Lal. Further prayer has been made that revenue entries in favour of the defendants are illegal, null and void and have no effect on rights of the plaintiff and the same are liable to be corrected under Section 45 of the Punjab Land Revenue Act. He further prayed for consequential relief of injunction restraining the defendants from dispossessing the plaintiff from the suit land.

The plaintiff has claimed that Harnam Singh was owner of the

suit land and he sold the same to defendant No. 1 and father of defendants No. 2 to 6. Thereafter, plaintiff purchased the property vide registered sale deed dated 17.6.1967 executed by Jagat Ram and Joginder Lal and he is in possession since 1967. He has constructed his residential house and installed hand pump. He is an illiterate person and could not get the mutation sanctioned in his name. Due to wrong entries in the revenue record, defendants are threatening to dispossess the plaintiff illegally and forcibly.

The defendants filed the written statement raising preliminary objections inter alia that the suit is time barred and the plaintiff has no cause of action to file the suit. It is admitted that suit land was owned by Harnam Singh. Defendants have become owner in possession of the property. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The learned trial court, on due consideration of the pleadings, issues framed for determination, evidence adduced on record and rival submissions made by counsel for the parties, answered issues Nos. 1 and 2 against the plaintiff with the findings that the plaintiff has failed to prove his possession over the property in dispute and suit for declaration without

claiming relief of possession is not maintainable.

The matter was carried in appeal and the Additional District Judge (Ad hoc) Fast Track Court, Hoshiarpur accepted the appeal, reversed the findings recorded by the trial court in view of observations recorded in paras 15 and 16 of the judgment and as a consequence, suit of the plaintiff was decreed.

Counsel for the appellants has assailed the judgment passed by the appellate court primarily on two counts. The first submission made by counsel is that as suit for declaration has been filed on the basis of a registered sale deed dated 17.6.1967 in the year 2005, more than three years from the date of sale deed, the same is barred by limitation. The second submission is that as in view of discussion made by the trial court, the respondents/plaintiff failed to prove his possession on the suit land, simpliciter suit for declaration without claiming relief of possession is barred under Section 34 of the Specific Relief Act. In addition, it is submitted that even if no such plea has been raised in the written statement questioning maintainability of the suit, the same being a legal issue can be raised at any stage of the proceedings more particularly in the circumstances that question of maintainability of the suit was raised before the trial court

itself and was actually answered against the respondents/plaintiff. It is further argued that plea of the plaintiff that he is in possession of the suit property gets falsified and belied in view of entries in the revenue record reflecting possession of the defendants as well as the facts elicited during cross examination of Daulat Ram PW1, Jaswant Singh PW2 and Karamjit Singh son of Joginder Singh PW4.

Counsel for the contesting respondents (legal representatives of deceased Joginder Singh plaintiff), on the contrary, has supported the judgment passed by the court in appeal with the submission that error committed by the trial court was rightly rectified. It is argued that the defendants have not denied sale of suit land by Sh. Harnam Singh in favour of Jagat Ram defendant No. 1 and Joginder Lal predecessor in interest of defendants No. 2 to 6. They have also not disputed that Jagat Ram and Joginder Lal further alienated the suit land vide registered sale deed dated 17.6.1967 in favour of Sh. Joginder Singh son of Sh. Sant Ram. According to counsel, entries in the revenue record are not a document of title. The correctness of entries qua ownership of suit land gets rebutted in view of the registered sale deed executed by Harnam Singh in favour of Jagat Ram and Joginder Lal and further sale by Jagat Ram and Joginder Lal in favour

of Sh. Joginder Singh. It is further argued that defendants have tried to take benefit of wrong entries in the revenue record by taking advantage of illiteracy of the plaintiff who failed to get the mutation sanctioned on the basis of sale deed dated 17.6.1967 executed in his favour. It is urged that there is no challenge to plea of the respondents/plaintiff that a house has been constructed on suit land and a hand pump and an electric connection in the name of Karamjit Singh son of Joginder Singh have been installed. It is vehemently argued that even if the witnesses examined by the respondents/plaintiff have admitted correctness of the revenue entries, the same gets sufficiently rebutted by the registered sale deed and non-specific denial of averments in the plaint that on the suit land, Joginder Singh has raised construction of his residential house.

I have heard counsel counsel for the parties, perused the paper book and records of the courts below.

Counsel for the appellants has not disputed that Joginder Singh became owner of the suit land on the basis of registered sale deed dated 17.6.1967. The contention of the appellants that suit for declaration on the basis of registered sale deed is barred by limitation is misconceived and merits outright rejection. In view of the settled position in law, there is no

limitation for a true owner to seek declaration qua ownership unless the defendant(s) is able to prove that he is in possession of the suit property and his possession has resulted in extinguishment of title of the true owner by way of adverse possession. As in the present case, no such plea was raised by the defendants, the aforesaid contention is devoid of merit.

Much stress has been laid by counsel for the appellants that simpliciter suit for declaration without seeking relief of possession is not maintainable. In order to decide this issue, the first question would be as to who is in possession of the suit land. The plaintiff has claimed his possession over suit land since the year 1967 when the sale deed dated 17.6.1967 was executed in favour of Joginder Singh. In para 3 of the plaint, it has been averred that the plaintiff is in physical possession of the suit property since 1967 and he has constructed a residential house therein and installed hand pump. This fact can be evident from the site plan. The plaintiff has also installed electric meter in the suit property in his son's name. In response thereto, the defendants in the written statement has alleged, reads as under:-

“That para No. 3 of the plaint is incorrect hence denied.

Answering defendants are owners in possession of the

suit land.”

There is no specific denial that a residential house has been constructed and a hand pump has been installed in the suit property. There is no challenge to the site plan appended with the plaint. It has not been denied that an electric meter has been installed in the suit property in the name of son of the plaintiff. There cannot be any dispute about the settled position in law that the facts which have not been specifically denied by the adversary are deemed to be admitted by him. Not only this, Daulat Ram PW1, Jaswant Singh PW2 and Karamjit Singh son of Joginder Singh PW4 have reiterated that the plaintiff has constructed his residential house and also installed a hand pump therein. An electric meter has been installed in the name of Karamjit Singh son of Joginder Singh(since deceased) in the suit property.

In cross examination of Daulat Ram, Jaswant Singh and Karamjit Singh, there is no challenge to their testimony with regard to construction of residential house, installation of hand pump and electric meter in the property in question. Even there is no challenge to correctness of the site plan Ex. P4. There cannot be any denial that statement made by a witness on a particular fact if not challenged during cross examination, it

amounts to admission on the part of contesting party. In view of averments raised in the plaint that have not been specifically denied in the written statement coupled with non-challenge to testimony of the witnesses in regard to the facts discussed hereinbefore, I am afraid that plea of the appellant can be accepted that they are in possession of the suit property or suit for declaration for want of seeking consequential relief of possession is not maintainable by invoking Section 34 of the Specific Relief Act.

To be fair to the appellants, counsel has tried to draw some mileage from the statements of the witnesses admitting correctness of revenue entries. As has been noticed hereinbefore but at the cost of repetition, correctness of revenue entries gets sufficiently rebutted in view of the fact that continuous entries in the khasra girdawaris qua possession has been in favour of the defendants despite the fact that the suit land is no more agricultural land and the same has been converted into a residential house. This apart, Daulat Ram PW1 has categorically denied that the defendants are in possession of the land in question. In the later part, he has admitted it correct that after Harnam Singh, the defendants have become owners in possession of the disputed land. He further deposed that on the spot, the girdawari is being made correctly by the department. The

statement of a witness is to be read as a whole. Daulat Ram has specifically denied possession of the suit land by the defendants. His statement that after Harnam Singh, the defendants have become owner in possession gets falsified from the registered sale deed. There is no challenge to his testimony with regard to suit land being converted into a residential house by the plaintiff and installation of electric meter and hand pump therein at the behest of the plaintiff. Jaswant Singh has also admitted correctness of the revenue entries. But again there is no challenge to his deposition regarding construction of a house by Joginder Singh on the suit property as well as installation of a hand pump and electric meter therein. Karamjit Singh has strongly corroborated plea raised in the plaint. A single sentence in his statement that the entry in Ex. P1 (copy of jamabandi) being correct is not at all sufficient to controvert his remaining statement wherein he has categorically denied that after death of Harnam Singh entries in the name of his successors are being correctly recorded. He has further specifically denied that the defendants are owners in possession of the suit property. In view of the above, the appellants cannot derive any advantage from the revenue entries to establish their plea of possession.

For the foregoing reasons, the appeal fails and is accordingly

dismissed with costs.

(Rekha Mittal)
Judge

24.5.2016
paramjit