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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5408-2012 (O&M)
Date of decision : 19.08.2016

Baljinder Singh and others

... Appellants

Versus

Maan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amarjit Markan, Advocate
for the appellants.

Mr. Shubhankar Baweja, Advocate
for respondent Nos.3 to 11.

1. Whether reporters of 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?

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgement and decree of the lower Appellate Court, whereby the suit of the respondent(s)-plaintiff(s) dismissed by the trial Court, has been decreed.

Mr Amarjit Markan, learned counsel appearing on behalf of the appellants-defendants submits that the plaintiff-Roor Singh has filed the suit for possession in respect of the suit land allegedly on the premise that the same was under illegal and unauthorized possession of the appellants-defendants on the ground that he was an allottee of the suit property and was in established possession of the same, much less, harvested the Hari crop upto April 2004 and after harvesting the Hari crop in the year 2004, the suit

property was lying vacant, but the defendants in the month of May 2004, forcibly and illegally occupied the suit property. The suit property is 56 kanals and 10 marals. He submits that the respondent-plaintiff-Roor Singh has filed the suit by concealing the facts and not disclosed the factum of earlier litigation qua title of the suit and the copy of the plaint dated 05.08.2006 sought to be placed on record by way of additional evidence.

He further submit that the defence taken by the appellants-defendants was that it is the defendant No.2, who was in exclusive possession of the suit property on the basis of the agreement to sell dated 18.11.1980 (Ex.D-1). A separate counter-claim for relief of permanent injunction restraining the plaintiff-Roor Singh from transferring and alienating the land mentioned in the plaint, was also filed and the same was rebutted by a written statement at the behest of the respondent(s)-plaintiff(s). It was stated that the stand of the appellants-defendants had been that the plaintiff-Roor Singh had never remained in the established possession of the suit land owing to the fact that he had entered into agreement to sell after receiving the entire sale consideration in the presence of the witnesses. The mutation proceedings qua the suit property were pending. The plaintiff-Roor Singh agreed to get the sale deed registered within one month of the decision of the mutation proceedings.

He further submits that an amended written statement was filed and the respondent(s)-plaintiff(s) did not file replication to the amended written statement and therefore, the factum of the agreement to sell and the concealment of the previous suit had gone un-rebutted. The respondent(s)-plaintiff(s), in support of his case, examined himself as PW-1

and tendered into evidence the copy of Jamabandi Ex.P1, Ex.P2 and Ex.P3. On the other hand, the appellants-defendants examined Rattan Lal Garg as DW-1, Baljinder Singh as DW-2, Pritpal Kaur as DW-3, Dharamjit Singh as DW-4, Dr. Inderjit Singh as DW-5 and tendered into evidence order dated 14.05.1987 (Ex.D-9), copy of Jamabandi for the year 1992-93 (Ex.D-10), Jamabandi for the year 1997-98 (Ex.D-11), Jamabandi for the year 2002-03 (Ex.D-12), Khasra-girdawari for the period from 1988 to 1993 (Ex.D-13), Khasra girdawari for the period from 1993 to 1998 (Ex.D-14), Khasra girdawari for the period from 1998 to 2003 (Ex.D-15) and khasra girdawari for the period from 2003 to 2007 (Ex.D-16) to establish the possession.

As per the Jamabandi (Ex.P-1 to Ex.P-3), the suit land was owned by Arazi Matruka Mahajrin Billa-allottee and the plaintiff-Roor Singh had been shown to be in cultivating possession. The plaintiff failed to prove the title and therefore, the question of possession did not arise, rather the whole thrust of the plaintiff was that the factum of the ownership was admitted by the defendants in view of the agreement to sell. He submits that the plaintiff miserably failed to prove the possession of the suit property in the jamabandi (Ex.P-1 to Ex.P-3) what to talk of upto 2004 whereas, on the contrary the defendants have been shown to be in possession as per the document of the plaintiff i.e. Ex.P-1 and so on and so forth i.e. khasra girdawari reflected above.

He submits that the appeal bearing No.470 of 1987 had been filed by Madan Gopal son of Mangal Shah, Roor Singh son of Sardara Singh, Sucha Singh, Thakur Singh sons of Saudagar Singh, Jassu Ram @ Jattu Ram against Maghar Singh, State of Punjab, Union of India and Smt.

Chand Kaur @ Chanda regarding the land in question which stands admitted and the order of status qua regarding possession had been passed. The plaintiff-Roor Singh had contested the aforementioned appeal through Harmail Singh his attorney and the appeal bearing **RSA No.471 of 1987** titled as **“Madan Gopal V/s Maghar Singh”** is also pending. The respondent(s)-plaintiff(s) had not mentioned any exact month and date of alleged dispossession.

The lower Appellate Court has wrongly/erroneously formed an opinion that defendants were in possession of the suit property being attorney of the plaintiff-Roor Singh and therefore, exclusive possession was of the plaintiff, thus, perversely relied on the principle that possession of a tenant or attorney is nothing else, but of the principal/landlord.

He further submits that the lower Appellate Court has made out a new case which was not made out in the plaint, though, the lower Appellate Court found that the agreement to sell dated 18.11.1980 stood duly proved, much less, the payment of the sale consideration. The appellants-defendants are/were entitled to protection of possession under Section 53-A of the Transfer of Property Act, but the lower Appellate Court has rendered a finding holding that the appellants-defendants were in permissive possession of the suit property being attorney of the plaintiff. The agreement to sell also contained a clause that in case the allotment in favour of Roor Singh is cancelled, then he would not seek the refund of the money, thus, until and unless the title is not decided, he could not seek the possession more over had not been able to prove the alleged dispossession.

He submits that Roor Singh was allotted a land out of surplus land owned

by big land-owner of village Ugoke. He was a resident of another village and could not manage and control the suit land. It is, in this background of the matter, he entered into agreement to sell, aforementioned, by surrendering the possession to Harbakshish Singh-defendant and he also executed general power of attorney in favour of Harmail Singh-defendant to defend the proceeding with regard to the allotted land. As per the judgement and decree dated 23.12.1986 rendered by the Additional and District Sessions Judge, Patiala, allotment in favour of Roor Singh had been set aside and against the said judgement, as already mentioned the appeals are pending. The aforementioned judgement is sought to be placed on record by way of additional evidence by moving a separate application.

He further submits that one Ram Kishan had sold 1/3rd and 1/6th share out of 988B – 13B and 50B – 14B out of samlat Hasab Rasab Khewat of Village Ugoke to Mohd. Abdul Aslam Khan and others, vide two separate registered sale deeds before the partition of the country. Maghar Singh son of Ram Kishan Singh had filed two suits challenging the sale deeds that it was an ancestral property and was sold without consideration. The said suit was decreed vide judgment and decree dated 23.01.2006 and during the consolidation proceedings, the land measuring 554K – 5M were allotted in lieu of the land sold by Ram Kishan vendor and after his death, Maghar Singh became the owner of the suit land as the said land was illegally declared as evacuee property. Out of which, land measuring 56K -10 M was illegally allotted to Roor Singh, whereas 62K – 5M illegally allotted to Madan Gopal. The aforementioned allotment was challenged which was dismissed by the trial Court on 18.09.1985. Two

appeals were filed and the same were allowed on 23.12.1986. It is, in this background of the matter, the appeals bearing Nos.470 & 471 of 1987 are pending.

He further submits that once the allotment in favour of Roor Singh, who was residing in another village, had been set aside, the suit was required to be dismissed on the ground that he has no *locus standi* to file the suit, thus, urges this Court for formulation of the following substantial questions of law:-

1. Whether the findings contained in the impugned judgment of the lower Appellate Court by holding that the possession of the defendants were permissive are perverse and contrary to law, particularly when it has been held under para no.29 of the impugned judgment that the execution of the agreement to sell dated 18.11.1980 Ex.D-1 has been duly proved and Roor Singh and received the entire sale consideration?
2. Whether the lower Appellate Court had misread, mis-constructed and misinterpreted the provision of Section 53 of the Transfer of Property Act, particularly when it has been established that Roor Singh allottee being resident of another village had surrendered the possession to defendant No.2 in pursuance of agreement to sell dated 18.11.1980 Ex.D-1?
3. Whether the findings contained in the impugned judgment that the benefit of Section 53-A of the Transfer of Property Act, is not available to the defendants, because their possession upon the suit land is not in the capacity of vendees in part performance of the agreement, are perverse, contrary to record and to law and the same are liable to be set aside?
4. Whether the suit of the plaintiff was maintainable in the presence of the findings contained in the judgment dated 23.12.1986 of the then ADJ Patiala?

He further submits that an application bearing No.15096-C of 2012 under Order 41 Rule 27 CPC be also allowed as the documents sought to be placed on record are the grounds of appeal of other RSA, true copies of the judgement and decree and earlier suit which are *per se* admissible. Though, the documents were in the knowledge of the defendant No.2, but could not be placed on record and they would be essential and necessary for just decision and as well as for the substantial cause in order to determine the controversy involved in the present case.

Mr Shubhankar Baweja, learned counsel appearing on behalf of respondent(s)-plaintiff(s) No.3 to 11 submits that the judgement and decree of the lower Appellate Court is perfect, legal and justified. The execution of the agreement to sell was seriously refuted on the ground that it was a result of fraud and misrepresentation. The same has not been proved in accordance with law as no marginal witness had been examined. The scribe examined, was not able to prove the agreement to sell and even if, the agreement to sell had been proved, the appellants-defendants cannot seek the protection of possession under Section 53-A of the Transfer of Property Act as requisite provisions have not been proved. The defendants had never put into possession of the agreement to sell and they were holding the possession on behalf of the plaintiff being attorney-holder. The plaintiff did not have the knowledge of the previous litigation and was not bound to disclose the same. The instant suit was for possession based upon the title. The property was evacuee which was allotted to the plaintiff. Once the title has been admitted by the defendants, the trial Court could not have rendered the finding against plaintiff of having not proved the possession, thus, urges

this Court for affirming the findings under challenge.

In rebuttal, Mr. Amarjit Markan, Advocate submits that even the counter claim had been set aside as the injunction sought by taking the benefit of Section 53-A of the Transfer of Property Act. The plaintiff has miserably failed to prove the possession.

I have heard the learned counsel for the parties and appriased the paper book and of the view that the findings rendered by the lower Appellate Court are not only fallacious, but perverse and liable to be set aside on the following reasons:-

Once the allotment in favour of Roor Singh has been set aside and he was no longer having a title and the matter is still pending, thus, he did not have a cause of action to claim the possession on the basis of the title. The relevant khasra girdawari as referred above, much less, jamabandi produced on behalf of the plaintiff showed the possession of the defendants, much earlier than pleaded. The Court could not have treated the defendants as licensee of the plaintiff being attorney-holder. In fact, the agreement to sell dated 18.11.1980 was a complete sale and a clause was inserted therein that in case the allotment is cancelled, he would not seek the refund of the money, thus, the possession was handed over to the appellants-defendants. Until and unless, the title is not proved in the pending appeals, in my view, the suit was premature. In fact, the averments in the suit read with the evidence brought on record, the plaintiff has miserably failed to prove the alleged dispossession in April 2004.

The documentary evidence sought to be placed on record by way of additional evidence, in my view, are essential and necessary for the

adjudication of the case and accordingly, the application bearing **CM No.15096-C of 2012** is allowed and the documents i.e. copies of the suit of previous litigation, judgment, much less, grounds of appeal of other RSA, are taken on record. In my view, the appellants-defendants are also entitled to seek the protection of the possession under Section 53-A of the Transfer of Property Act and they have been found to be in long and settled possession and the possession is being derived in lieu of the agreement to sell. I am in agreement with the findings rendered by the trial Court particularly with regard to the fact that when the amended written statement had been filed, the plaintiff did not file the replication, thus, they did not deny the execution of the agreement to sell dated 18.11.1980. It is a settled law that once, the pleadings are not specifically denied or there is an evasive denial, they are deemed to be admitted. The plaintiff, in my view, failed to discharge the onus of alleged dispossession in order to seek the possession, he had to prove that he was put in possession of the property at any point of time. The agreement to sell is of the year 1980, whereas the jamabandi for the year 1982-83 onwards, much less, khasra girdawari (revenue record) showed the possession of the appellants-defendants. It was a complete sale as Roor Singh had executed a attorney, in view of the provisions of Section 202 of the Contract Act. It is also a matter of record that in the grounds of appeal of other RSA, it has now been stated that the plaintiff had not executed any general power of attorney in favour of Harmail Singh or has revoked the same.

Keeping in view the facts and circumstances of the case, I am of the view that the suit was liable to be dismissed as no occasion arose for

lower Appellate Court to form different opinion that one arrived at by the trial Court, though, it is the last Court of fact and law. Once, the suit is based upon the title and the title is not proved, person cannot seek the possession.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and that of trial Court is restored. The substantial questions of law as noticed above are answered in favour of the appellants-defendants and against the respondent(s)-plaintiff(s).

With the aforesaid observations, the appeal stands allowed.

19.08.2016
yogesh

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No