

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.381 of 2013 (O&M)

Date of Decision.20.12.2016

Jai Singh and another

.....Appellants

Vs

Balbir Singh and others

.....Respondents

Present: Mr. Rahul Sharma-1, Advocate
for the appellants.

Mr. Bhupinder Singh, Advocate
for the respondent Nos.1, 2, 4 & 3(i), (ii), (iv) and (v).

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.1083-C of 2013

For the reasons stated in the application, delay of 38 days in
filing the appeal is condoned.

Application is allowed.

RSA No.381 of 2013

The appellants-defendants are aggrieved of the concurrent
finding of fact whereby the suit seeking the following relief has been
decreed by both the Courts below:-

*“Suit for permanent injunction restraining the defendants
forever from interfering in the peaceful possession of the
plaintiffs over the suit property marked by letters ABC shown
red in the site plan attached with is part and parcel of
plaintiffs' Bara comprised in Khasra No.268 and 269 situated
at village Kabri, Teh and Distt Panipat bounded as North:
Plaintiffs Bara No.268 and 269, South: Street, East: Property
of Chander Bhan, West: defendants property situated at Vill.
Kabri as the plaintiffs are the owners in possession of the same
and the defendants are the owners in possession of the same*

and the defendants have no right title or interest whatsoever in the same.”

Mr. Rahul Sharma-I, learned counsel appearing for the appellants submits that in order to seek the relief aforementioned, it was incumbent upon the respondents-plaintiffs to establish the possession to prove title. They did not dispute the ownership of the appellants-defendants of khasra Nos.268-269. He says that jamabandi for the year 2002-03, Ex.P11, has been brought on record to show that the respondents-plaintiffs are shown in possession but the fact remains that the plaintiffs did not place on record any demarcation report to establish that the alleged Bara is adjoining their property and they had been in possession of the property. On the contrary, the defendants have been keeping their agricultural implements there.

The Courts below also did not take into consideration the site plan Ex.D1, though admitted by the plaintiffs, much less, the candid admission in the cross-examination, it is not adjoining khasra Nos.268 and 269. In fact, the plaintiffs were not owners of the property and therefore, injunction should not have been granted. Even long, settled and uninterrupted possession has not been proved. The respondents-plaintiffs have claimed possession on the basis of wrong entry entered between the members of the Gram Panchayat. All these factors lead to irresistible conclusion that the judgments and decrees of the Courts below are not sustainable and liable to be set aside.

Per contra, Mr. Bhupinder Singh, learned counsel appearing for the respondents-plaintiffs submits that the appellants-defendants had also filed suit seeking injunction against the respondents-plaintiffs in their own

2009 ordered for consolidation of the suits. The operative portion of the order reads as under:-

“With the consent of learned counsel for the petitioner and for respondent Nos.1 to 5, present petition is being disposed of in the following terms:-

(i) Parties shall maintain status quo qua the possession and nature of the property till the final decision of the suit.

*(ii) Respondent Nos.1 to 5 herein also filed Civil Suit for permanent injunction titled as **Jai Singh Vs. Balbir Singh and others** in the Court of Civil Judge, Panipat for permanent prohibitory injunction over the property in dispute. Present Civil Suit No.85 of 2009 pending before the Court of Addl. Civil Judge (Sr. Divn.), Panipat was filed by present petitioner/plaintiff against Jai Singh and others seeking permanent prohibitory injunction over the same property. Since in both the suits parties and property in dispute are same, hence both the suits shall be consolidated and decided together.*

(iii) Hearing of the suit shall be completed and decision therein shall be passed by learned trial Court at the earliest, in any case both the cases shall be decided within a year from today.

(iv) Both the learned counsel appearing before me undertakes not to seek unnecessary adjournment.”

The counsel for the appellants submits that he does not have copy of the order but suffered a statement at bar on instructions from his client that the suit was filed by the appellants.

The appellants-defendants have not been able to establish their possession except the writing and the writing has not been proved as one of the witnesses also did not support the same. Ex.D1, site plan, has not been

believed as author of the same had not been examined. All these facts weighed in the mind of the Courts below in decreeing the suit.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma, for, no doubt, the respondents-plaintiffs contended that the land in dispute is adjoining to Khasra Nos.268 and 269 but the fact remains that as per the jamabandi for the year 2002-03, they have been in possession. In this regard, rely upon the judgment and decree dated 08.11.1995 passed in Civil Appeal No.109 of 1992 filed against the judgment and decree dated 14.05.1992 in litigation between the respondents-plaintiffs (appellants therein) with Sujan Chand, brother of the present appellants-defendants. In this regard, the counsel for the respondents-plaintiffs has drawn attention of this Court to paras 9, 16 and 19 to contend that the *aks sajra* and the demarcation report placed on record do not show possession of the appellants-defendants or that of Sujan Chand. The judgment rendered in the previous litigation between the parties is admissible in evidence as per the provisions of Section 30 of the Indian Evidence Act.

I have gone through the aforementioned judgment and the paras 9, 16 and 19 referred to above by the counsel for the respondents-plaintiffs are reproduced as under:-

“9. The documentary evidence of the defendants is comprised of Ex.D1, copy of the jamabandi for the year 1982-93, recording them along with others as joint owners in possession of khasra Nos.268 and 269; Ex.DW4/A and Ex.DW4/B are the true copies of Rapat Raoznamcha No.12 dated 12.9.1994 for demarcations of these Khasra Nos.268 and 269 and DW4/C, copy of aks-shajra thereof.

16. From the careful perusal of the record, it is very clear that the plaintiffs have miserably failed to prove that they are owners in possession of the suit 'Bara'. Rather on the other hand, defendants are able to prove that they are owners in possession thereof. Pleadings of the plaintiffs is simply that they are collateral and Biswedars in the village and are joint owners in possession of the suit property from the time of their forefathers. They and their forefathers had been using the same for tethering their cattle and for making and storing cow dung cakes. They are using it as owners as the same was lying in front of their house, after leaving the street. The defendants alleged that they were allotted these 'Baras', in consolidation of holdings and on its basis, they threatened to encroach upon the suit 'Bara'. But evidence of the plaintiffs is not on the lines of these pleadings of the plaintiffs that they are Biswedars in the village or that they have been in long continuous possession since their forefathers or that it was in Abadi-deh of that it was not part of the allotted Baras of the defendants. No positive, cogent or reliable evidence is led to prove this pleaded case. Not only this, whatever evidence is led by them, is self contradictory and not, at all, reliable or trust-worthy. Plaintiff Sujan Chand as PW2 has simply stated that the plaintiffs are owners in possession of the suit property since their forefathers. He is not coming to the Court that they are owners in possession being Biswedars. On the other hand, in his cross-examination, he has admitted the case of the defendants that they are also Biswedars in the village. Therefore, on this score, the case of the plaintiffs is not better than that of the defendants.

19. Plaintiff Sujan Chand as PW-2, in his cross-examination has specifically admitted that 'Baras' were allotted to the defendants, but he could not say whether the numbers thereof were 268 and 269. Despite this case of the plaintiffs and despite specific pleadings of the plaintiffs, as well as, in the written statement that the defendants are claiming the suit

property as part of Khasra No.268 and 269, duly allotted to them; the plaintiffs did not try to get it demarcated. On the other hand, from the statement of Prittam Singh PW1, it is clear that he was appointed by the Tehsildar to demarcate the suit property, but he could not do so because of the rains and therefore, the plaintiffs did not contact him, as perhaps the demarcation was got done by somebody else. The plaintiffs have not brought on record the report of the said person who had allegedly demarcated the suit property. Therefore, presumptions and inferences in this regard are against the plaintiffs and in favour of the defendants.

I am of the view that the evidence had already come on record that the appellants herein were not in possession of the property. Had they been in possession, there would have been a reflection of the same because there was demarcation report, much less, *aks sajra* and the fact that appellants-defendants have already withdrawn the suit seeking permanent injunction which was almost in the shape of counter claim.

For the reasons aforementioned, I do not intend to differ with the findings rendered by both the Courts below as the same are based upon correct appreciation of oral as well as documentary evidence as indicated above. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 20, 2016
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No