

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1569 of 2016 (O&M)
Date of Decision: 21.09.2016

Amrik Singh @ Tunda and another

.....Appellants

Vs

Shadi Ram and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amrik Singh, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Defendants are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below.

[2]. Brief facts as gathered from the record are that the plaintiffs filed a suit for possession in respect of suit property situated within *abadi deh* of the village having defined dimensions. Plaintiffs alleged that they were owners in possession of the suit property. Earlier, it was owned by Smt. Parwati widow of Sarwan Singh. After the death of Parwati, plaintiff became owners of the suit property as she was survived by the plaintiffs. Litigation in respect of the suit property was contested right upto this Court. RSA No.2654 of 1979 filed by

defendant No.1 was dismissed on 10.04.1997. The suit for possession filed by Parwati was decreed upto this Court and the property in question was part and parcel of the earlier litigation which already stood culminated upto this Court. In execution, warrants of possession were issued and the possession was delivered to the decree-holders. Thereafter, plaintiffs were dispossessed by the defendants and FIR No.9 dated 11.01.2010 was registered. Plaintiffs were dispossessed from the suit property on 08.10.2009. An application was filed before the executing Court for re-issuing the warrants, however the same was dismissed on the ground that the possession was to be delivered by the Court only once and not time and again. With this background the suit for possession was filed before the trial Court.

[3]. Defendants contested the suit on all counts. The objection of the defendants was that the suit property was not in existence on the spot.

[4]. After completion of the pleadings, both the parties went to trial on the following issues:-

“1. Whether the plaintiffs are entitled to decree for possession of the property shown by words ABCD in the site plan? OPP

2. Whether the suit of the plaintiff is not

maintainable in the present form? OPD.

3. *Whether the suit of the plaintiffs is time barred? OPD.*
4. *Whether the suit of the plaintiffs is vague, if so, its effect on the suit? OPD.*
5. *Relief.”*

[5]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[6]. After appraisal of the evidence, trial Court decreed the suit for possession with costs vide judgment and decree dated 10.02.2015. Defendants remained unsuccessful before the lower Appellate Court and the appeal was dismissed on 05.01.2016. That is how the present appeal came to be filed before this Court.

[7]. I have considered the submissions made by learned counsel for the appellants at some length.

[8]. Evidently as per record, suit property was inherited by the plaintiffs from Parwati. Regular Second Appeal filed by defendant No.1 was dismissed by this Court and in execution of decree, the executing Court delivered the possession to the decree-holder. The possession was delivered through warrants of possession issued by the executing Court. Later on, plaintiffs were dispossessed by the defendants. Fresh warrants of

possession were not issued by the executing Court on the premise that warrants can be issued only for once. Separate suit for possession was filed. In such eventuality, it was obligatory to compare the site plan tendered in earlier litigation and the present suit, in order to find out whether the suit property was the same or not?

[9]. Evidently, Ex.PW-1/D is the site plan which was tendered in the earlier case titled as Parvati vs. Surjan Singh. The boundaries depicted in the said site plan duly tallied with the description as shown in the headnote of the plaint of the present suit as well as with the Ex.PW-1/I, the site plan in the same case for getting the execution, which also depicted the same boundaries as depicted in the headnote of the plaint of the present suit.

[10]. In the aforesaid site plan i.e. Ex.PW-1/I, the portion shown by letters 'BCDIH' is the property in question as the parties had struck a compromise with regard to other portion of the property. PW-1/K is the site plan in the present case, in which same boundaries are mentioned as shown in the site plan of the earlier litigation.

[11]. Principle of preponderance and probability was adhered to by both the Courts below in decreeing the suit of the

plaintiffs, which in my considered opinion cannot be faulted with.

The appreciation of evidence was done by the both the Courts below. Identity of the property viz-a-viz. the suit property involved in the previous litigation and the present litigation was established to the hilt with reference to the site plan as discussed above.

[12]. In view of above, no question of law, much less any substantial question of law as framed in para No.13 of the grounds of appeal, arises for consideration by this Court. Factual matrix of the case has been appreciated by the Courts below on the basis of evidence. No re-appreciation is possible in the Regular Second Appeal.

[13]. Consequently, this appeal is found to be totally bereft of merits and the same is accordingly dismissed.

September 21, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No