

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 1308 of 2015 (O&M)
Date of Decision: January 29, 2016

Nirmal Singh and another

... Appellants

Versus

Chanan Kaur 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. Amandeep Singh Manaise, Advocate,
for the appellants.

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellant against the judgment and decree dated 21.01.2013 passed by learned Addl. Civil Judge (Senior Division), Gurdaspur, whereby suit filed by the plaintiff for permanent injunction has been decreed, as well as, against the judgment and decree dated 04.11.2014 passed by learned District Judge, Gurdaspur whereby appeal preferred by the appellants has 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 permanent injunction on the ground that Bawa Singh and Karnail Singh sons of Bur Singh were the owners in possession of the suit plot along with other adjoining land. In the year 1983, plaintiff purchased the suit plot by oral agreement and possession was handed over to him by the vendor and on 22.05.2002, the said agreement was reduced into writing. In this way, plaintiff is in possession of 4 kanals of land, besides house of Kartar Singh (husband of plaintiff), which is on the western side of the property in dispute. Defendant no.1 filed a suit for permanent injunction regarding suit property against the husband of the plaintiff, which was dismissed on 03.05.2004. Against the said judgment, appeal was also dismissed on 09.04.2007. Defendants are threatening to interfere in her possession illegally and forcibly of which they have no right. She requested the defendants many times not to do so, but they refused. Hence, suit was filed.

Upon notice, defendants appeared and filed written statement denying ownership as well as possession of the plaintiff over the suit property. It was averred that defendant no.1 is in possession of the suit property since partition of the country. He has planted five trees and has also constructed a khurli and pucca room in the same and he is using the same as haveli. Plot in dispute is situated within the lal lakir of the village. Plaintiff is in possession of land measuring 2 kanals 10 marlas out of khasra nos. 77, 118 and 89.

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

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPD*
- 2. Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, decreed the suit vide judgment and decree dated 21.01.2013. Against that, defendant nos. 1 and 2 preferred an appeal, which has been dismissed by the learned lower appellate Court vide judgment and decree dated 04.11.2014. Hence, this second appeal.

I have heard learned counsel for the appellants.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 13 of grounds of appeal, arise for consideration in this second appeal:-

- “a) Whether the findings of learned courts below are based upon misreading of evidence and are perverse?*
- b) Whether the statement of a party made in a previous suit with regard to different property can be used as an admission in a separate suit regarding separate property?*
- c) Whether the impugned judgments and decrees are wrong, illegal, unjust and perverse?”*

Learned counsel for the appellants 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.

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

Both the Courts below, after appreciating the evidence on record, have recorded concurrent findings of fact. The findings of fact

recorded by the lower appellate Court are as under:-

“10. Admittedly, appellant no.1 Nirmal Singh earlier filed a suit for permanent injunction against Kartar Singh husband of the plaintiff-respondent- Chanan Kaur vide Civil Suit No. 83 of 2002. It is also not disputed that said suit was hotly contested and was dismissed vide judgment and decree dated 03.04.2004 Ex.P2 and Ex.P3 and the appeal filed against that judgment was also dismissed by the then learned District Judge, Gurdaspur vide judgment dated 09.04.2007. In judgment Ex.P2, it was observed that the plaintiff of that case namely, Nirmal Singh now appellant, has categorically admitted the husband of the present plaintiff Chanan Kaur to be in possession of the land in dispute. To the similar effect are the observations made in the judgment in appeal Ex.P4. This fact has also been admitted by DW-1 Lakha Singh and DW-2 Balwinder Singh. It is not the case of the appellants that they have taken the possession of the suit plot after the dismissal of the appeal vide judgment Ex.P4.

11. Much stress has been laid on the writing Ex.D1 vide which members of the panchayat of the village and many other persons have admitted the appellant Nirmal Singh to be in possession of the suit property. However, this writing is of no use to the appellant because it was created during the pendency of this case i.e. on 30.09.2012. A perusal of the judgment Ex.P4 would show that in the previous case also Nirmal Singh has relied upon one certificate issued by Gram Panchayat but the same was not relied upon by the Court. Similarly, writing Ex.D1 cannot be relied upon because firstly it is contrary to the case of the appellants and secondly, it has not been proved by calling any panchayat member in the witness box. Moreover, in this writing it has been written that Nirmal Singh has raised wall of 3-1/2 feet on the western side

of the suit plot but this fact has not been pleaded by the appellant in their written statement. It has not been disclosed when this wall was raised.”

Concurrent findings of fact have been recorded by both the Courts below which are based on documentary evidence. Learned counsel for the appellants could not show as to how 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 in limine.

January 29, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge