

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.5296 of 2016

Date of Decision: 29.11.2016

Nasib Singh and others

... Appellants

Vs.

Joginder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Hardip Singh, Advocate
for the appellants.

Amol Rattan Singh, J.

This appeal has been filed by the plaintiffs in a suit seeking permanent injunction against the respondents-defendants, where, though the suit was initially decreed in favour of the present appellants, the said decree was reversed by the learned first appellate Court.

2. As per the 3 plaintiffs, they and Baldev Singh (who is now the LR of the first plaintiff), had purchased the suit property, which is stated to be a plot measuring 60x35 ft., situated within the 'abadi' of village Salempur Bangar, Tehsil Jagadhri, District Yamuna Nagar, vide a sale deed dated 28.09.1971 and that they were put in actual physical possession of the plot on the same date.

(It may also noticed here itself that the second plaintiff, Prem Singh, has now been impleaded as a proforma respondent. He is also seen to be the son of the first plaintiff, Nasib Singh and brother of the third plaintiff, Kuldeep Singh).

The respondents-defendants (hereinafter to be referred to as the defendants) are stated to have their houses adjoining the suit property on its western side and, as contended, they wanted to acquire the suit property and started threatening the plaintiffs with encroachments thereupon, and in fact they were also stated to have demolished a part of the wall of their houses, so as to have easy access to the suit property.

Consequently, with the defendants allegedly not desisting from their “illegal activities”, the suit was instituted on 12.11.2007.

3. On notice being issued, the five defendants appeared and filed a joint written statement, taking the usual preliminary objections on maintainability, concealment of facts and locus etc. and on merits denying that the plaintiffs had ever purchased the suit land.

It was stated that actually they (plaintiffs) had purchased agricultural land in some other village and were never ever in possession over the suit property, possession of which was contended to be that of the defendants.

Further, as per the defendants, a written agreement was executed in 1971 between them and Kirpal Singh and Tejinder Singh, the owners of the suit property, by which it had come to the share of the defendants. It was further contended that there was a written exchange of land and *bara* between the first defendant, i.e. Joginder Singh and the aforesaid Kirpal Singh.

Yet further, it was contended that there exists a boundary wall over the suit property with a latrine also existing upon it, alongwith a generator belonging to the defendants lying on the property, and a *Hodi*, all of which the defendants were enjoying peacefully, without any obstruction.

Thus, denying all averments made in the plaint, a prayer for dismissal of the suit was made.

3. No replication having been filed, the following issues were framed by the learned Civil Judge (Jr. Divn.), Yamuna Nagar:-

- “1. Whether the plaintiffs are entitled for a decree for permanent injunction as alleged?OPP
2. Whether the suit is not maintainable?OPD
3. Whether the plaintiffs have concealed the true and material facts from the Court?OPD
4. Whether the plaintiffs have no locus standi to file the present suit?OPD
5. Whether the suit of the plaintiffs is hopelessly time barred?OPD
6. Whether the suit of the plaintiffs is bad for misjoinder and non-joinder of necessary parties?OPD
7. Relief.”

4. To prove their case, the plaintiffs examined one Sukhwinder Singh and plaintiff no.3, Kuldeep Singh, by way of oral evidence and tendered 6 documents, including the sale deed dated 28.09.1971, a site plan attached to the sale deed, a copy of a ration card, a voters list and some receipts, by way of documentary evidence, Exs. P-1 to P-5 respectively.

The defendants examined one Om Parkash and defendant no.2, Amrik Singh, other than Gurmej Singh and Amrit Pal Singh and another Om Parkash, Lambardar, as also one Naresh Kumar.

They tendered 10 documents in evidence, including two site plans, two sale deeds, electricity bills, a voters list, aks-shijra and “Naksha Abadi Deh”.

5. Having considered the pleadings and arguments and upon appraisal of the evidence, the learned Civil Judge held that the plaintiffs had

indeed purchased the suit land vide a sale deed dated 28.09.1971 from the aforementioned Kirpal Singh and Tejinder Singh, as also defendant no.1, Joginder Singh.

As regards the written exchange entered into between Joginder Singh and Kirpal Singh, it was found to have not been proved and yet further, the field book and aks-shijra were found to show the names of the plaintiffs as well as the defendants, but with no proof as to what part of the 'abadi deh' was occupied by each of them.

It was further found that plaintiff no.3, in his testimony as PW-1, had deposed that contempt proceedings had been initiated against the defendants for being in possession over some part of the suit property and that in his cross-examination, it had been revealed that the plaintiffs were not actually residing in village Salempur where the suit property was located and therefore, the defendants were in possession over some part of it and had also constructed a generator room, washroom and a *hodi* on the property.

6. Hence, holding that though the plaintiffs were owners thereof, the defendants were in possession over some part of the suit property, the main issue was decided partly in favour of both the parties, to the extent that the plaintiffs are owners in possession of some part of the property, whereas defendants were in possession of some part.

Accordingly, the suit of the plaintiffs was partly decreed, holding them to be owners of the suit property with part possession thereof, with the defendants injuncted from interfering in that part of the property.

As regards with the part that the defendants were found to be in possession of, it was held that they could not be dispossessed either forcibly or even by way of the present suit, but the plaintiffs were at liberty to avail of

an appropriate remedy for dispossession of the defendants, in due course of law.

7. The defendants appealed against the aforesaid judgment and decree, with two of the three plaintiffs also having filed cross-objections before the first appellate Court.

The learned lower appellate Court, having noticed the pleadings before the Court below as also the evidence led, held that it was in fact incumbent upon the plaintiffs to prove that they had remained in possession of the suit property on the basis of their title and possessory rights; but in fact they could not prove that possession of any part of the suit property went to the defendants only after filing of the suit, and with the defendants having established from the testimonies of DWs 4 and 5, i.e. Amrit Pal Singh and Om Parkash, Lambardar, it was proved that a boundary wall along with a gate, was in existence over the suit property, with a generator room, water tank and a latrine also having been constructed within the boundary wall, by the defendants.

Further holding that it was never the case of the plaintiffs that they had raised a boundary wall, and in fact the defendants having specifically pleaded to that effect, it was actually the defendants who were in possession of the entire property.

Holding as above, the judgment of the learned Civil Judge, to the effect that the plaintiffs were in possession of some part of the property was set aside, with the entire suit of the plaintiffs dismissed, alongwith the cross-objections filed by them.

8. Before this Court, Mr. Hardip Singh, learned counsel for the appellants-plaintiffs, submitted that in fact once the plaintiffs had proved that

the suit property had been purchased by them in the year 1971, vide a registered sale deed, then in fact, the Courts below should have enjoined the respondents-defendants from entering any part of it. Instead, even the partial decree in favour of the plaintiffs was reversed by the learned lower appellate Court, without any reasoning.

9. Having considered the aforesaid argument, the first thing to be obviously noticed, is that the suit of the plaintiffs was one seeking only a decree of permanent injunction against the defendants, with neither a declaration, nor possession of the suit property sought.

Their pleaded case was that the defendants had demolished a part of the wall of their own house at points 'A to D' as shown in the site plan, and by virtue of that they were accessing the suit property, which was otherwise contended to be in possession of the plaintiffs since the time of its purchase by them in 1971.

The defendants, on the other hand, had claimed to have built a boundary wall as also a generator room, a latrine and a *hodi* on the plot.

As regards the generator room, *hodi* and washroom/latrine, even the learned Civil Judge recorded a finding that these structures had been constructed by the defendants, and they were consequently held to be in possession of that part of the suit property. However, no specific finding with regard to the boundary wall was recorded. Further, nothing is seen in the judgment (as per the findings recorded after hearing arguments in paragraphs 11 and 12 thereof), as to how the possession of the plaintiffs on the remaining part of the suit property was proved. In fact, it appears that such possession was recorded in their favour simply on the basis of the fact that contempt proceedings had been initiated by the plaintiffs against the

defendants, on the ground that there was a violation of the interim stay order.

The other reason appears to be on the basis of the fact that they were actually held to be owners of the property, in terms of the sale deed dated 28.09.1971.

10. The learned first appellate Court, on the other hand, recorded a specific finding that as per the defendants, even a boundary wall had been constructed on the property with a gate opening towards its northern side, which plea was not specifically denied by the plaintiffs even in their cross-objections.

Consequently, the conclusion drawn by that Court was that the entire property actually stood occupied by the defendants.

Even before this Court, learned counsel for the appellants-plaintiffs, could not point out any perversity in that finding, to the effect that the boundary wall was actually not existent or that it had not been constructed by the defendants. Hence, especially seen with the finding recorded that the plaintiffs are not residents of the village where the suit property is situated, it appears very clear that the learned lower appellate Court came to a correct conclusion as regards the possession of the suit property.

11. Obviously, with the appellants having been recorded to be owners thereof on the basis of the sale deed dated 28.09.1971, the observation of the learned Civil Judge, to the effect that they would be entitled to seek possession of the remaining suit property by appropriate remedy, was also a correct finding, (though only with regard to a part of the property, that Court having erred in holding the plaintiffs to be in possession of even any part of it).

12. Consequently, in view of the above aforesaid findings, I see no

reason to interfere with the judgment and decree of the learned lower appellate Court.

Resultantly, this appeal is dismissed in limine but with no order as to costs.

November 29, 2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.