

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.5562 of 2016 (O&M)

Date of decision:22.11.2016

Babu Khan

... Appellant

Vs.

Suraj Pal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Suman Jain, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-defendant is aggrieved of the judgments and decrees rendered by both the Courts below, whereby, the respondent-plaintiffs have been granted the following relief:-

“It is ordered, the suit of the plaintiffs succeeds and same is hereby decreed with no order as to costs and sale deed dated 24.7.1989 is declared as null and void and the defendant is directed to hand over the vacant possession within two months.”

Mr. Suman Jain, learned counsel for the appellant-defendant submits that the respondent-plaintiffs filed their suit on the basis of the entry of mutation qua khasra no.56/10, vide which the alleged mutation in favour of appellant-defendant qua aforementioned khasra number had been set aside. In fact, the appellant is a bonafide purchaser for a valuable

consideration, vide sale deed dated 24.07.1989 executed by Gokal, who had purchased the same from Hari Singh and Khadag Singh. The plaintiffs have to establish the case on the basis of the preponderance of the evidence. All the documents have been tendered and have not been proved on record. No doubt, the defendant has also tendered the documents, Ex.D1 to Ex.D17 showing the possession but under the garb of the aforementioned decree, the claim of injunction restraining the defendant from interfering into possession of the plaintiffs, has been granted, whereas, once there is a relief of possession, injunction should not have been granted. Even otherwise, no court fees qua the possession has been paid and therefore, the suit could not have been decreed.

Notice of motion.

Mr. Y.P.Khullar, Advocate accepts notice on behalf of the respondent being caveators. He submits that the revenue record, as per the provisions of Section 44 of the Punjab Land Revenue Act, 1887 carry a presumption of truth but the same has not been rebutted. All the jamabandis would reflect the ownership of the plaintiffs along with other co-shares and not that of defendant, predecessor-in-interest and Gokal's predecessor-in-interest, therefore, the appellant-defendant had not been able to prove ownership of the property at the hands of Gokal. It is in this aspect of the matter, relief of possession had been granted as there is a categorical pleading in paragraph 11 of the plaint that the respondent-plaintiffs are in actual physical possession of part/portion of the suit property. Hence the possession sought is of the area which is in illegal and unauthorised

possession of the appellant-defendant in pursuance of the forged and fabricated sale deed dated 24.07.1989 and thus, submits that the concurrent findings of facts and law cannot be interfered until and unless there is gross illegality and perversity.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jain, for, the decree as noticed above is only in respect of setting aside of the sale deed and as well as granting relief of possession. Paragraphs 8 and 11 of the plaint read as under:-

“8. That illegal and unauthorised construction had been raised by the defendant without having any right, title or interest as trespasser two year ago. The sale deed of Gokal dt.3.9.81 was forged, fabricated, sham and bogus document and thus mutation of sale in the name of Gokal was rejected. Pitamber and his sons continuing owners in possession of the suit property and thus the sale had been made to the plaintiffs and Devi Ram which confers right, title and interest upon the plaintiffs and Devi Ram and defendants have got no concern with the suit property. Thus the construction raised over the disputed khasra no. is illegal, unauthorised and had been raised malafidely by trespassing over the suit property.

11. That the plaintiffs are lawful owners in actual physical possession of part/portion of the suit property except the illegal

and unauthorised construction raised by the defendants as mentioned above. The defendant is bent upon to raise illegal and unauthorised construction over the disputed khasra no. and is bent upon to raise illegal and unauthorised construction over the vacant portion owned and possessed by the plaintiffs as co-sharers without having any right, title or interest or authority and threatened to alienate 15 marla area of the disputed khasra no. without having any right, title, interest in it and in case if the defendant succeeds in his illegal motive in that event plaintiffs will suffer substantial loss and irreparable injury which cannot be compensated with cost and money.”

On co-joint reading of the aforementioned paragraphs, it is evident that the plaintiffs were in possession of part/portion of the suit property and not of the whole. The possession has been sought of the property in question which is in un-authorized occupation of the appellant-defendant as he has been able to prove the raising of the construction, much less possession by way of producing the electricity bills etc. The documentary evidence tendered by both the parties carries a presumption of truth as there was no objection at that time, though they were duly executed.

During the course of hearing, jamabandi for the year 2007-08, Ex.P10, mutation Ex.P12 and mutation Ex.P-13 have been perused, which show the property to be in favour of the respondent-plaintiffs along with other co-sharers and not that of defendant as indicated above. The defendant

has failed to rebut the aforementioned documents by leading a direct and cogent evidence, much less any revenue record that Gokal was owner of the property, much less, vendors namely, Hari Singh and Kharag Singh. In the absence of the same, in my view, the respondent-plaintiffs have been able to prove the ownership, much less, claim qua possession. The decree is in consonance with the record of the Courts below.

On going through the issues, I am of the view that no issue of court fees has been pressed but it is a legal question which has been raised.

At this stage, Mr. Khullar submits that before seeking execution of the judgment and decree, he will pay the appropriate Court fees with regard to property which is in un-authorized use of the appellant-defendant.

With the aforementioned observations, objection of appellant-defendant is over-ruled. I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

November 22, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No