

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 4861 of 2015

Date of Decision: January 06, 2016

Dharampal and another

... Appellants

Versus

Harbhajan Singh

... Respondent

**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. Rajesh Dadwal, Advocate,
for the appellants.

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellants-defendants against the judgment and decree dated 11.02.2013 passed by learned Additional Civil Judge (Senior Division), Pathankot whereby suit filed by the respondent/plaintiff for mandatory and permanent injunction has been decreed, as well as, against the judgment and decree dated 29.01.2015 passed by learned District Judge, Pathankot, whereby appeal preferred by the appellants/defendants 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 mandatory and permanent injunction against the defendants Dharam Pal and his son on the ground that defendant no.1 is his real brother. Their father, namely, Veer Bhan migrated from Pakistan at the time of partition and all of his sons, including the plaintiff and defendant no.1 started living separately. On 22.07.1983, plaintiff purchased a plot in an open auction from Rehabilitation Department. He raised construction in two phases. Electricity and Water connections were also got installed. Defendant no.1 retired from GREF. In April 2005, on the request of defendant no.1, plaintiff allowed him to live on the first floor of the house, as shown in red colour and marked ABCDEFGH in the site plan attached with the plaint, as a licensee for a period of six months. After expiry of such license, defendant refused to vacate it. The defendants threatened to carry out material changes, for which they have no right. Hence, suit was filed.

Upon notice, defendants appeared and filed written statement taking preliminary objections that suit is bad due to non joinder of necessary parties; plaintiff has no cause of action. On merits, it was averred that after migration of Veer Bhan from Pakistan, all of his sons including the plaintiff and defendant no.1 started residing jointly. After migration from Pakistan, Veer Bhan occupied the land underneath the house in dispute. Initially mud house was constructed in the year 1947. After the death of Veer Bhan, property in question was allotted to his legal heirs. In the year 1983, mother of the plaintiff and defendant no.1 died and since then defendant no.1 started living in the portion of the house in question. It was further averred that defendant no.1 was in service but his family members used to reside in the house in dispute. When the defendant was serving in GREF, he used to

send money to the plaintiff and with that money, he got the plot allotted in his name. House was constructed by defendant no.1. The possession of the defendant is uninterrupted, continuous, hostile and adverse to the knowledge of the plaintiff without making payment of any rent and thus, defendant has become owner of the property by adverse possession.

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 suit for mandatory injunction? OPP*
- 2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 3. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD*
- 4. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 5. Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, decreed the suit vide judgment and decree dated 11.02.2013. Against that, defendants preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 29.01.2015. 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. 7 of grounds of appeal, arise for consideration in this second appeal:-

- “i) Whether the appellants are in possession of the land since 1947 after migrated from Pakistan?*

- ii) *Whether the ld. Courts below have considered the documents produced by the appellants/defendants as Ex.D1 to D10?*
- iii) *Whether the Rehabilitation Department auctioned the land to the LRs of Veer Bhan Singh?*
- iv) *Whether before auctioning the land in dispute the appellants/defendants have constructed the mud house on the disputed plot?*
- v) *Whether the appellants are become the owner of the property by way of adverse possession?”*

Learned counsel for the appellants vehemently contended that Ex.D10 has not been taken into consideration. Ex.D10 is a driving license indicating the residence and possession of the defendants/appellants. The house in question was constructed by the defendants/appellants and the plaintiff/respondent has no right and title over the house in question. The findings recorded by both the Courts below are against law and not sustainable in the eyes of law.

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

There is categorical finding recorded by the Court of first instance that plaintiff/respondent had purchased the property in question from the Rehabilitation Department vide auction dated 22.07.1983. Initially, he constructed ground floor of the house in question shown in yellow colour in the site plan, thereafter, he raised the first floor over the said house which is marked by letters ABCDEFGH shown in red colour. The electricity and water connection have been installed at the instance of the plaintiff/respondent and he has regularly been paying the bill thereof. It has been categorically held by the Courts below that plaintiff-responent is the owner of the property in question. It has also been recorded that Dharam Pal

– defendant no.1 has admitted that he retired from GREF in the year 2007 and after retirement, he came to Pathankot and then only he started living on the first floor of the premises in question. A plea has also been raised that defendants-appellants are in adverse possession of the property. Meaning thereby, they have accepted the ownership of the plaintiff-respondent. The defendants-appellants have failed to prove with cogent evidence on record that they have been continuously residing in the premises in question, rather the case of the plaintiff-respondent is that the defendant No.1-appellant no.1 is licensee being in fiduciary relationship as brother.

Concurrent findings of fact have been recorded by both the Courts below. Learned counsel for the appellants could not show that 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 06, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge