

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 5135 of 2015 (O&M)
Date of Decision: January 28, 2016

Megh Singh

... Appellant

Versus

Lal Chand 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. Narinder S. Lucky, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 09.04.2014 passed by learned Civil Judge (Junior Division), Barnala, whereby suit filed by the appellant/plaintiff for permanent injunction has been dismissed, as well as, against the judgment and decree dated 08.04.2015 passed by learned District Judge, Barnala, whereby appeal preferred by the appellant/plaintiff has also 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 he was owner in possession of 870/2087 share of land measuring 104 kanals 7 marlas having khewat khatauni no. 190/156 to 359, khasra nos. 920(0-3), 723 (8-15), 781 (0-18), 585 min (4-8), 588 (10-2), 589 (8-16), 590 min (2-17), 591 (3-8), 590 min (8-0), 712(0-6), 713 (0-6), 706 (0-7), 707 (0-9), 715 (0-11), 721 min (4-10), 722 min (8-11), 584 (10-13), 585 min (5-7), 575 (6-12), 576 (6-12), 577 (4-8), 1819/719 (8-0), situated at Village Bhure. Out of this land, the plaintiff had sold 9 kanals of land comprised in khasra no. 589(8-16), 590 min (0-4) to defendant no.1 vide sale deed no. 194 dated 15.5.2007 and 50 feet front of this 9 kanal land was on the road. Thereafter, defendant no.1 had sold his property to defendants no.2 to 5 and the defendants against law and without any authority, with mala fide intention to harm the plaintiff, want to interfere in possession of the plaintiff over the suit land and want to dispossess the plaintiff forcibly from the same. The defendants were requested to refrain themselves from interfering into possession of the plaintiff over the suit land and not to dispossess the plaintiff forcibly without due course of law, but all in vain. Hence, suit was filed.

Upon notice, defendant no.1 appeared in court on 15.09.2010 and suffered a statement that he had no concern with the suit property and he would not take forcible possession of the same. He had sold the property in dispute to Bhajan Singh etc. Thereafter, defendant no.1 failed to appear before the court of first instance and he was proceeded against ex-parte.

Defendants no. 2 to 5 appeared and filed their written statement

and took preliminary objections with regard to locus standi; cause of action; maintainability; estoppel; mis-joinder and non-joinder of parties. It was averred that plaintiff himself has constructed his residential house over the land adjoining the main road without getting the suit land partitioned.

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? OPP*
- 2. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the plaintiff is barred by his own act and conduct from filing the present suit? OPD*
- 5. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of the necessary parties? OPD*
- 6. Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, dismissed the suit vide judgment and decree dated 09.04.2014. Against that, plaintiff preferred an appeal, which has also been dismissed by the lower appellate Court vide judgment and decree dated 08.04.2015. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 14 of grounds of appeal, arise for consideration in this second appeal:-

- “a) Whether the appellant is in exclusive possession of the property mentioned in the headnote of the plaint?*
- b) Whether the appellant is not entitled to the relief of permanent injunction?*
- c) Whether the impugned judgments are contrary to law and evidence?*
- d) Whether the courts below have properly appreciated the evidence led by the appellant as well as evidence of respondents while passing the impugned judgments?*
- e) Whether the findings are contrary to the pleadings and facts and are sustainable in the eyes of law?”*

Learned counsel for the appellant contended that both the courts below have erred in appreciating the evidence on record. The judgments and decrees of both the Courts below are based on conjectures and surmises. Therefore, the impugned judgments and decrees are liable to be set aside. Learned counsel further contended that the appellant is in exclusive possession of the property in dispute.

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

Both the Courts below, after appreciating the evidence on record, have recorded findings of fact with regard to the measurement of the property of the plaintiff. existence of passage. The Court of first instance recorded the following findings:-

“18. Perusal of the file shows that in order to prove his case the plaintiff has relied upon site plan Ex.P1 and jamabandi Ex.P2. The site plan as Ex.P1 has been prepared on the verbal statement of the plaintiff and this fact has been admitted by PW3. Perusal of jamabandi Ex.P2 shows that the suit property

is still joint between the parties and the plaintiff had sold 9 kanal of suit property to defendant no.1 vide sale deed Ex.P3. No doubt it has been mentioned in Ex.P3 that the plaintiff had sold 9 kanals of land to the defendant no.1 in khasra no. 589 and 590 but the entry in this regard has not been incorporated in the revenue record. The khasra no. 589 and 590 both are shown to be jointly possessed by the parties. The fact that the defendants no. 2 to 5 had purchased their share in the suit land from defendant no.1 Lal Chand has been admitted by the plaintiff. This fact is also clear from the perusal of sale deed Ex.D1, D3, D5 and D8 and from the mutation Ex.D2, D4, D6 and D9. Even as per jamabandi Ex.D7 it is clear that the defendants no. 2 to 5 had purchased their share in the suit property from the defendant no.1 Lal Chand. Perusal of Ex.D7 also makes it clear that the suit property is possessed by both the parties jointly and no partitioned of the same has taken place.

19. *As per the judgment rendered by Hon'ble Punjab and Haryana High Court in the case of **Karam Singh vs. Lakhvir Kaur, 2011(3) CCC 162 (P&H)**, it has been held that a co-sharer can seek relief of injunction against other co-sharer, when such co-sharer is in exclusive possession to the exclusion of other co-sharers. However, when the possession of all co-sharers is joint, relief of injunction cannot be sought by either of the co-sharers and the only relief which is available to the co-sharer is to seek partition. Even as per section 41(h) of Specific Relief Act, 1963, no injunction can be granted, when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust. So, in the present case, the plaintiff/applicant has an alternative remedy to get the suit property partitioned.*

20. *So, in view of the above discussion, it is clear that the plaintiff being co-sharer along with the defendants is in joint*

possession over the suit property and he has failed to prove his exclusive possession over any part of the suit property. Therefore, in accordance with above said judgment and Section 41(h) the present suit of the plaintiff is not maintainable. The plaintiff is not entitled to relief of permanent injunction as prayed for.....”

Said findings have been affirmed by the lower appellate Court.

Concurrent findings of fact have been recorded by both the Courts below. Learned counsel for the appellant 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. It is settled law that this Court cannot interfere in the findings of fact recorded by the Courts below on appreciation of evidence brought on record, unless the findings are perverse. No perversity has been pointed out by the learned counsel for the appellant. 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 28, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge