

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.5781 of 2015 (O&M)

Date of decision: 13.12.2016

Avneep Saini

... Appellant

versus

Jarnail Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.G.S.Nagra, Advocate,
for the appellant
Mr.Aman Bansal, Advocate,
for the caveators

...

AMOL RATTAN SINGH, J.

This is an appeal filed by the plaintiff, after his suit seeking a decree of permanent injunction against the respondents-defendants, was initially decreed in his favour by the learned Civil Judge (Junior Division), Fatehgarh Sahib, but in the appeal filed by the defendants, that judgment and decree was reversed by the first appellate court and his suit was dismissed though without costs.

2. The facts, as taken from the judgments of the courts below, are that in his suit, the appellant-plaintiff (hereinafter referred to as plaintiff) had contended that his father, Varinder Choudhari, was earlier in actual exclusive possession of the suit property, described in the plaint from “time immemorial” and after his death on 14.01.2011, the plaintiff and his brother Amit Saini were in actual, peaceful and un-interrupted possession over it.

The defendants were described to be “bravo type of persons” (!) who with *mala fide* intention, were threatening to interfere in the possession of the plaintiff.

Hence, the suit was instituted on 29.04.2013.

3. Upon notice issued to them, the three respondents-defendants (hereinafter referred to as defendants) appeared and file their written statement, taking preliminary objections on maintainability, the plaintiff not having come with clean hands and having no *locus standi* etc.

On merits, the contents of the plaint were denied, stating that they were never threatening to interfere in the possession of the plaintiff and actually, Varinder Choudhari had already sold his land a long time ago, but the plaintiff taking the benefit of wrong entries “standing in the name of Varinder Choudhari.”

4. A replication was filed by the plaintiff to controvert the stand of the defendants and to reiterate his own stand, upon which the following issues were framed by the learned Civil Judge:-

“1. *Whether the plaintiff is entitled for decree of permeant injunction as prayed for? OPP*

2. *Whether the suit of plaintiff is not maintainable? OPD*

3. *Whether the plaintiff has suppressed the material facts from this Court? OPD*

4. *Whether plaintiff has no cause of action and locus standi to file the present suit? OPD*

5. *Whether suit of plaintiff is false and frivolous? OPD*

6. *Relief.”*

The plaintiff examined himself and also tendered a copy of the '*Jamabandi*' for the year 2008-08 and a copy of a '*Khasra Girdawari*' by way of documentary evidence. He also examined one Kuldeep Singh as PW-2.

The defendants examined defendant no.2, Ajaib Singh, who deposed in terms of the written statement.

5. Upon appraising the evidence and considering the pleadings and arguments, the learned Civil Judge held that the exclusive possession of the father of the plaintiff over the suit property was proved, with him shown in column of cultivation in the '*Jamabandi*' for the year 2008-09, as also by way of '*Khasra Girdawari*' entries from the year 2009 till 2013.

As such, holding that the defendants had no concern with the suit property and had not even been able to produce any witness with regard to the fact that the plaintiffs' father had been possession of the suit property, the plaintiff had every right to protect such possession.

6. With the main issue decided in favour of the plaintiff, the other issues were also not held in favour of the defendants and consequently, the suit was decreed in favour of the plaintiff.

7. Upon the defendants having filed an appeal against the aforesaid judgment and decree, the learned first appellate court, after having duly noticed the pleadings and having referred the issues framed, as also the evidence led by the respective parties, observed that though the entries in the revenue record carried a presumption of correctness, however, such presumption was rebuttable and that the plaintiff in his cross-examination had actually admitted that he and his brother were not in possession of the suit property. Hence, it was held that the presumption attached in favour of

the revenue record had been rebutted by the plaintiff himself, which the learned Civil/ Judge had not considered.

8. It was further found by the learned lower appellate Court that the father of the plaintiff, Varinder Choudhari, had no doubt been recorded to be in cultivating possession of the suit property in terms of both, the '*Jamabandi*' Ex. P-1 and the '*Khasra Girdawari*', Ex. P-2, but admittedly he had died on 14.01.2011. Thereafter, the plaintiff was nowhere recorded to be in possession of the suit property even in the revenue record. However, observing that being the son of Varinder Choudhari, the plaintiff normally be expected to step into the shoes of his father, but with his own admission that neither he nor his brother were possession of the suit property, again that inference/presumption, also did not hold good.

9. It is to be noticed here that the learned lower appellate court first observed in its judgment that even defendant no. 2, Ajaib Singh, (appellant before that Court), had admitted that the appellants have no concern with the suit property, and as such, neither party had been able to establish their respective claims to it. However, thereafter, it was further observed that the defendants (appellants before the first appellate Court) had brought a "copy of a sale deed dated 08.05.2013", vide which one Sohan Singh was shown to be recorded as a co-owner and that as per the copy of the '*Jamabandi*' for the year 2008-09, Ex. P-1, a 1/3rd share had been purchased by Kuldeep Kaur, wife of Ajaib Singh (defendant no. 2), by Balwinder Kaur, wife of Jarnail Singh (defendant no. 27) and Gurmeet Kaur, wife of Gurmail Singh (defendant no.3).

Holding that the copy of the sale deed was a public document

and judicial notice of the same could be taken, that Court further went on to hold that those co-owners were not made a party to the suit filed by the plaintiff, and even one Tek Chand and another Pardeep Singh, who were also recorded to be co-owners, were also not made party to the suit.

10. On the aforesaid reasoning, the contention of counsel for the appellant was found to be “in consonance of the grounds of the appeal”, and therefore, the findings of the lower court with regard to the issue of whether the plaintiff was entitled to a decree of permanent injunction or not, were reversed.

Similarly holding that the onus to show that the suit was maintainable in the form in which it had been filed, and that how the plaintiff had *locus standi* to file the suit had not been shown by him, all the other issues were also decided against the plaintiff, thereby reversing the finding of the lower court completely.

11. Hence, having held as above, the appeal of the defendants was allowed and the suit of the plaintiff dismissed by the first appellate Court.

12. In this second appeal, Mr. G.S Nagra, learned counsel for the appellant-plaintiff, has drawn attention of this Court to the fact that the sale deeds referred to by the learned lower appellate Court as part of the reason for reversing the judgment of the learned Civil Judge (Junior Division), Fatehgarh Sahib, were actually executed after the filing of the suit and therefore, he contended that the said Court wholly erred in reversing the well reasoned findings of the learned Civil Judge.

13. Mr. Aman Bansal, learned counsel for the caveators-defendants on the other hand, reiterated the reasoning given by the learned lower

appellate court and naturally, prayed for dismissal of the appeal.

14. Having considered the aforesaid arguments, as also the judgments of the learned courts below, the first thing which needs to be stated is that the suit filed by the appellant-plaintiff was one seeking a decree of permanent injunction against the respondents-defendants and no declaration of any kind had been prayed for.

Hence, without commenting upon the correctness or otherwise of the statement of the learned counsel for the appellant, to the effect that the sale deed relied upon by the lower court was executed after the suit was filed, that sale deed never having been exhibited by the respondents-defendants in support of their contentions, (even though taken 'judicial notice of' by the first appellate Court, however, even so, while disagreeing with the findings of the first appellate Court in that regard, this Court obviously cannot discard the first reason given by that Court, that the plaintiff himself had admitted in cross-examination, that neither he nor his brother were in possession of the suit land.

Hence, in the opinion of this Court, the contention of the learned counsel for the appellant and even in fact what was held by the lower appellate Court with regard to the sale deeds relied upon by it, eventually makes no difference to the outcome of this appeal, in view of the fact that the suit filed by the appellant was only one seeking a decree of permanent injunction against the respondents-defendants. Therefore, to repeat, the appellant in his cross-examination, having 'candidly admitted' that neither he nor his brother were in possession of the suit property, and with even the revenue entries not reflecting in their favour but in favour of their father, who

died on 14.1.2011, I see no reason to hold contrary to the essential finding of the lower appellate Court, to the effect that the appellant-plaintiff could not seek a decree of permanent injunction, he having admitted that he was not in possession of the suit property in any case.

15. Consequently, the appeal is dismissed *in limine* but with no order as to costs.

However, while dismissing the appeal, it is made clear that nothing observed by the Courts below, as regards the title to the suit property, shall be considered as any proposition settled on such title, in view of the fact that the suit filed by the plaintiff was only one seeking permanent injunction, with no question of title having been raised. Hence, any suit filed by any party, qua title to the suit land, would be decided wholly on its own merits on all aspects of the matter, with all sides at liberty to raise whatever pleas are legally available to them in any such proceedings, which would then be considered on their own merits and decided.

13.12.2016
pk/nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes