

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.6245 of 2015 (O&M)

Date of decision:22.8.2016

Harbhajan Singh @ Bhajan Singh

... Appellant

versus

Balkar Singh and others

... Respondents

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

Present: Mr.G.S.Sandhu, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J.

This appeal arises out of two 'cross civil suits' filed, one by the present appellant, impleading respondents No.1, 2 and 3 herein as defendants, alongwith one Mohinder Kaur and another Kala Singh @ Surjit Singh as defendants No.2 to 5 respectively. The said two defendants are the wife and son respectively of present respondent No.3 Karnail Singh, with respondent No.2 Gurcharan Singh being another son of Karnail Singh and respondent No.5 herein, being the daughter of Karnail Singh. Present respondent No.4 Hardev Singh was the 3rd defendant in the cross suit filed by the present respondent No.1 Balkar Singh, with the appellant being defendant No.5 in that suit, and the aforesaid Kala Singh @ Surjit Singh son of respondent No.3, being defendant No.4 therein.

Both the plaintiffs in the cross suits, i.e. the appellant and respondent No.1 herein, sought that the defendants in their respective suits be

permanently injunctioned from possession of largely the same suit property, but with the present appellant seeking such injunction qua 56 kanals of land and respondent No.1 Balkar Singh seeking injunction qua 52 kanals of land.

The entire land is stated to be situated in village Khera Bet, Tehsil and District Ludhiana.

Other than permanent injunction, the two plaintiffs in their cross suits also sought a declaration to the effect that each of them was owner in possession of the suit lands, on the basis of certain agreements. In the case of the present appellant, the agreement was stated to have been executed between him and respondent No.4 Hardev Singh (defendant No.3 in the cross suit), on 05.12.2002. In Balkar Singhs' suit (i.e. the suit of respondent No.1 herein), he stated that he had entered into two agreements on 24.02.2006 and 24.05.2006, with respondent No.2 herein, Gurcharan Singh son of respondent No.3 Karnail Singh, with both father and son being impleaded as defendants No.1 and 2 in the suit, as already noticed.

2. Both the suits were consolidated vide an order dated 03.12.2012 passed by the learned Civil Judge (Junior Division), Ludhiana, and were disposed of by a common judgment dated 16.08.2013. The present appellants' suit was to the effect that respondent Gurcharan Singh, who as per respondent No.1 Balkar Singh, had entered into two agreements with him on 24.02.2006 and 24.05.2006, was neither the owner nor in possession of the property in dispute. He was, in fact, simply made "a figure head just to grab the property" of the present appellant, Harbhajan Singh, and to oust him from his possession.

As per the appellant, he came into possession of the suit property

on the basis of an agreement executed by Mohinder Kaur wife of respondent No.3 Karnail Singh, mother of Gurbachan Singh (with Mohinder Kaur not impleaded as respondent in this appeal but defendant No.2 in the present appellants' suit). She was stated to have been the attorney of one Mal Singh son of Bhola Singh, who was the original owner of the suit property as per the revenue record.

It was further contended by the appellant that the property of Mal Singh was first sold by Mohinder Kaur and her husband Karnail Singh, to Hardev Singh respondent No.4 herein, but no sale deed was executed. Thereafter, Karnail Singh got the said property transferred from Hardev Singh, in the name of his son, Kala Singh @ Surjit Singh (again not impleaded in this appeal but defendant No.5 in the suit filed by the appellant). Karnail Singh, consequently, came into possession of the suit property but no entry could be made in the khasra girdawari in favour of defendant No.5 due to a notification of the State Government, as the suit property was actually owned by the Central Government.

However, it was averred that Mohinder Kaur had actually sold the suit property in the appellants' suit, measuring 53 kanals 9 marlas, to the appellant-plaintiffs' son Jagjit Singh, by way of an agreement dated 24.01.2002 and had received Rs.6,26,000/- as earnest money.

The date for execution of the sale deed was settled as 05.01.2009, as defendants No.2 and 3, i.e. Mohinder Kaur and her husband Karnail Singh, had already received Rs.1,55,000/- earlier.

On 30.12.2003, it was averred by the appellant-plaintiff, that Karnail Singh again took the property in dispute on lease/share cropping

basis at the rate of Rs.42,000/- per year, from the appellant-plaintiff but did not make the payment to the plaintiff, as a result of which he remained in possession of the property.

3. It was further contended that the parties were in long litigation and the possession of the plaintiff was “fully certified from the various documents” and as such the defendants had no right to interfere in the cultivating possession of the appellant-plaintiff.

Since the defendants did not desist from their interference and refused to admit the appellant as owner in possession of the suit land pursuant to the agreement dated 05.12.2002, the suit was filed.

4. In their reply to the said suit, the defendants, other than taking the usual preliminary objections of maintainability etc., stated that the plaintiff was not in possession of the suit land and that no agreement dated 05.12.2002 had been executed by him. Instead, he (the appellant-plaintiff) had already executed an agreement dated 18.10.2002 in favour of defendant No.3 Karnail Singh and possession of the suit property was with Karnail Singh, who had however delivered it to Balkar Singh, defendant No.1 in the present appellants' suit and the plaintiff in the other suit. Balkar Singh had executed agreements with Karnail Singh alongwith Gurcharan Singh son of Karnail Singh, on 24.02.2006 and 24.05.2006, as already noticed.

Hence, all the defendants stated that it was defendant No.1 Balkar Singh who was in possession of the suit land and not the appellant-plaintiff.

5. In the suit earlier filed by Balkar Singh (on 17.11.2006) about two months before the suit filed by the present appellant, the stand of Balkar

Singh was essentially the same, up to the extent of agreements signed between him and Gurcharan Singh on 24.02.2006 and 24.05.2006, with him (Balkar Singh) being in cultivating possession since then; but he had also stated thereafter that Gurcharan Singh alongwith other defendants, including the present appellant Harbhajan Singh, started threatening him to hand over possession, with the present appellant declaring that he was the owner of the land as he had purchased it from defendant No.3 Hardev Singh, who had entered into an agreement with defendant No.2 Karnail Singh.

Balkar Singh further stated in his plaint that Karnail Singh, after becoming the owner in possession of the suit land, had entered into the agreements aforesaid with the plaintiff and had handed over possession to him.

In view of the alleged threat received by the hands of the defendants, including the present appellant, Balkar Singh instituted the suit on 17.11.2006.

6. On notice in Balkar Singhs' suit, defendants, 1, 2 and 4 therein, i.e. Gurcharan Singh, Karnail Singh and Surjit Singh, filed a written statement admitting that Balkar Singh was cultivating the land in dispute but that only possessory rights had been given to him by Karnail Singh.

The allegations of threats were, of course, denied by those defendants, further stating that it was actually Hardev Singh and present appellant Harbhajan Singh who were harassing the plaintiff as Hardev Singh had delivered possession to Karnail Singh through an agreement dated 08.10.2002 and as such, Hardev Singh had no right to transfer the possession to the appellant-plaintiff.

The ownership of the appellant was obviously denied, with Karnail Singh having handed over the possession to the plaintiff (Balkar Singh) on the basis of the agreements dated 24.02.2006 and 24.05.2006 having been admitted.

7. After consolidation of the two suits, the following common issues were decided together:-

“Issue no.1 of suit no.1

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

Issue no.1, 2, 5 of suit no.2

1. Whether the plaintiff is entitled to decree for permanent injunction restraining the defendants as prayed for? OPP
2. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP
5. Whether no agreement dated 5.12.2002 was executed by Hardev Singh? OPD

In Balkar Singhs' suit, he examined himself and two other witness, including Gurcharan Singh son of Karnail Singh, whereas the present appellant in his defence in that suit, examined himself and eight other witnesses.

8. After appraisal of the evidence and the pleadings, the learned Civil Judge eventually found that Balkar Singh (respondent No.1 herein) was entitled to a decree of permanent injunction with the present appellant not so entitled, as he had failed to prove any agreement dated 05.12.2002, executed by Hardev Singh (present respondent No.4) with him.

Three FIRs registered between the parties against each other

were also noticed by the learned Civil Judge and as regards the possession of

Balkar Singh (present respondent No.1), he having been shown in the khasra girdawaries to who have been in possession, the suit of Balkar Singh was decreed in his favour whereas the suit of the present appellant was dismissed.

9. As regards the appellants' claim with regard to the ownership of the suit land, it was found that the property was actually *shamlat deh* (village common land) and as such, he could not be declared owner thereof.

10. It needs to be noticed here that though even Balkar Singhs' suit, in addition to the permanent injunction sought against the defendants, a prayer for declaration had also been made, to the effect that he was the owner in possession of the suit property on the basis of the agreements entered into by him with Gurcharan Singh. However, that prayer seems to have been wholly missed by the learned Civil Judge, as no finding thereon was given and in fact, not even an issue was framed in that regard.

Since Balkar Singh is not in appeal before this court, nothing further needs to be examined in that regard, especially as the factual finding qua the declaration sought by the present appellant was that the suit land was actually in the ownership of *shamlat deh* of the village (though in the judgment of the learned Civil Judge, it was recorded that it was the ownership of the "State Government, i.e. *shamlat deh*").

11. The present appellant thereafter filed an appeal before the first appellate Court of the learned Additional District Judge, Ludhiana, with Balkar Singh not having filed any appeal despite no finding having been recorded by the Civil Judge on his prayer for a declaration of ownership.

12. After noticing the facts and considering the judgment of the learned Civil Judge, the first appellate Court confirmed the finding that,

undisputedly, as per the revenue record, the ownership of the land was that of the *shamlat deh* and again also recorded that it vested in the State Government. It was held that it could not have been sold or bought by either of the parties, though the parties were claiming possessory rights on the basis of “some writings”.

Referring to the first agreement relied by Balkar Singh, i.e. the one dated 24.11.2005 (Ex.D1), the first appellate Court found that though there was a mention of transfer of some properties on the basis of a compromise, but no khasra number was mentioned in that agreement. However, in the agreement dated 08.10.2002 executed by respondent No.4 herein, Hardev Singh, khasra numbers were specifically given for a total land holding of 148 kanals, of which Hardev Singh was found to be in exclusive possession, in the year 2002. However, no document/revenue record was found to have been produced from the year 1998 to 2000 and subsequently no khasra girdawari for the year 2003 was also placed on record to prove Hardev Singhs' possession to the suit land to the extent of 48 kanals.

Thus, even as per the agreement dated 08.10.2002 (also referred to as Ex.D1 in the judgment), possession had been shown to be delivered to Karnail Singh and not to appellant Harbhajan Singh. Hence, it was held that the appellant could not come into possession of the said property when possession was actually delivered to Karnail Singh.

Other than the aforesaid documents, the first appellate Court found that there was no mention of any khasra numbers which could be correlated from the revenue record with the property in dispute. Similarly, in a compromise document, Ex.D2, there was no mention of any khasra numbers

and respondent Balkar Singh was not even a party to the said compromise, which therefore could obviously not be binding upon him.

It was further found that an affidavit, Ex.D5, executed by Hardev Singh in favour of the appellant, was of no consequence as Hardev Singh had already delivered possession to Karnail Singh in 2002 and there was no entry in the revenue record showing possession having reverted back to Hardev Singh after 2002.

In a nutshell, therefore, it was found by the lower appellate Court, that with Hardev Singh having been recorded in possession of the suit property in 2002 and the said property having been handed over by him vide agreement dated 08.10.2002, Ex.D1, to Karnail Singh, thereafter Hardev Singh never having come into possession, he could not have handed over possession to the appellant, Harbhajan Singh.

13. The finding of the trial Court, however, with regard to the aforesaid documents not being admissible in evidence, they merely being photocopies of the original, was upset by the lower appellate Court, on the ground that the trial Court itself vide an order dated 28.01.2013, had allowed the present appellant, upon an application moved by him, to produce the said documents by way of secondary evidence.

14. Eventually, however, holding that the ownership of the suit land was of the State Government, but with Balkar Singh shown to be in possession of the suit property from 2003 to 2008, and the suit having been filed in the year 2006, his possession over the suit land stood established and as such, he was entitled to a decree of permanent injunction.

The first appeal of the present appellant was, therefore, dismissed and the judgment of the learned Civil Judge was upheld.

15 Before this Court, learned counsel for the appellant submits that the suit land is admittedly in the ownership of the *shamlat deh* but as regards cultivating possession, upto 2002 Hardev Singh, respondent No.4, is shown to be in possession, with whom the appellant entered into an agreement for possession of the suit land, therefore, the Courts below have wholly erred in holding respondent No.1 Balkar Singh to be in possession of the suit property.

16. Having considered the aforesaid argument, as already noticed in detail, the learned Courts below have ousted the appellant firstly on the ground that the said agreement does not give any khasra number and as such it cannot be held that the suit land was subject matter of the agreement.

The second reason, which upon query, even learned counsel has fairly admitted, was that in the *khasra girdwaries* after 2002, respondent No.1 Balkar Singh is shown to be in cultivating possession, in the year 2005.

However, he further submits that thereafter, there is a report (Report No.238, exhibited as Ex.D6 before the Courts below), by the revenue authority, to the effect that Balkar Singh had been wrongly shown in cultivating possession of the suit land, which, as a matter of fact, should have been shown in possession of the owner itself (*makbuja malkan*), i.e. the Gram Panchayat.

17. Having considered the above, that fact admittedly being the status (qua ownership of the suit land), it is obvious that the person from whom the appellant is stated to have purchased possession, i.e. Hardev Singh,

was actually in possession thereof on the date of the agreement between him and Karnail Singh, on 08.10.2002, going by the revenue record discussed by both Courts below. Karnail Singh having handed over possession to Balkar Singh thereafter, was also proved from the khasra girdawaries right from 2003 to 2008, as also found by the Court below. Hence, going by the revenue record, with no rebuttal proved against it, the appellant could not prove his possession of the suit land.

Further, with the khasra numbers of the land allegedly transferred (by way of possession) by Hardev Singh to the appellant, not given in the agreement, the appellant can claim no possessory right over the suit land on that score either.

18. Consequently, without commenting upon the rights of the Panchayat/true owner of the suit land, but finding no merit in the present appeal, it is dismissed *in limine*, but with no order as to costs.

CM No.15752-C of 2015

19. In view of the fact that the appeal has been dismissed in limine as above, the question of condonation of the delay of 143 days in filing the appeal is rendered academic and is not gone into.

22.8.2016

pk/dinesh

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No