

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

RSA No.6309 of 2014 (O&M)

Date of decision: 28.5.2016

Sat Narain

... Appellant

versus

Mahabir and others

... Respondents

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

- 1) To be referred to the Reporters or not?
- 2) Whether the judgment should be reported in the Digest?

Present: Mr.Gorakh Nath, Advocate,
for the appellant

AMOL RATTAN SINGH, J. (Oral)

CM No.15113-C of 2014

By this application, the applicant-appellant seeks condonation of the delay of 28 days in refiling the appeal.

For the reasons mentioned in paragraphs 4 and 5 of the application, the delay of 28 days in refiling the appeal is condoned.

The application is, thus, allowed.

RSA No.6309 of 2014

1. The suit out of which this second appeal arises, was filed by the plaintiff-appellant seeking permanent injunction against the three defendants (respondents herein), restraining them from interfering in his possession over the western half portion of the suit property (house), which he had inherited and was in possession thereof, (the eastern portion of the suit property having been inherited by the defendants, who were in

possession thereof). The suit property having been fully described in the plaint, he further sought an injunction against the defendants, restraining them from alienating his share in the suit property.

Allegedly, a month prior to the filing of the suit, the defendants started threatening the plaintiff to dispossess him from the western portion of the suit property and had also threatened that they would alienate it.

2. An earlier civil suit filed by one Jai Narain and Mangli, against the fore-father of the plaintiff and the defendants was referred to in the plaint, in which they (Jai Narain and Mangli) had claimed a 1/3rd share of the suit property. That suit was dismissed and the judgment of the learned Civil Judge was affirmed upto this Court, in RSA No.681 of 1954, vide a judgment and order dated 20.5.1959. Thus, the plaintiff submitted that it was undisputed that the suit property was ancestral in nature.

3. In their written statement, the defendants vaguely admitted to the previous litigation but further submitted that the suit was one for partition amongst the parties, which was dismissed and thereafter, on the suit property, Maman, the immediate predecessor-in-interest of the defendants, had constructed a house in the year 1967, in which the defendants have been living and allegedly, in the year 1981, an oral family settlement was also entered into, by which the suit property came to the share of the defendants, after which they had even constructed another floor upon the house. It was also stated by the defendants in their written statement that they were owners in possession of a double storey house, bearing No.169 in Ward No.7, measuring 198 sq. yards, situated within the abadi deh of Village Bhalaut, District Rohtak.

They also denied that the plaintiff is in possession of even half a share in the suit property.

It was, thus, contended by the defendants that they being the owners in possession, including the first floor of the house, at least since 1981, they had become owners of it also, in any case, by way of adverse possession. Though specifically the phrase “adverse” was not used, however, the implication was very apparently that, as it was stated that they were owners in possession of the house, hostile to the plaintiff and the entire world.

4. In evidence, the plaintiff examined himself and reiterated the contents of his plaint, and also produced his ration card, certified copies of the judgments and decrees in the civil suit, the first appeal and the second appeal, culminating into the judgment dated 20.5.1959, as also certified copies of a pedigree table (Ex.P5) and a map (Ex.P-6). He also produced copies of the 'khasra kistwar' and the 'jamabandi' for the year 2002-03.

He, further, examined one Naresh, Patwari, as PW2, who proved the pedigree table and the jamabandi, and another Patwari, Krishan Kumar, as PW3, who proved the aks-sijra and khasra kistwar (Ex.P6).

5. The defendants, on the other hand, examined one K.L.Kapoor as DW1, who testified to having prepared the site plan. They also examined Rajesh Kumar, Lower Division Clerk in the Electricity Company (UHBVNL) as DW2, who proved that the electricity connection on the suit property was sanctioned in the name of defendant No.1 on 13.5.1981, as also was an additional connection, on 11.11.1987.

The ration cards of defendants No.1, 2 and 3 were proved by

DW3, Kanwar Pal, Inspector in the office of the Food and Supply Department, Rohtak.

DW5 Manoj Kumar, Election Kanungo, proved the voters list in which defendant No.1 was shown to be entered at Sr.No.725 and the plaintiff at Sr.No.347.

DW4 was one Ramdhari, stated to be a resident of an adjoining house to the suit property, who proved his ration card (Ex.DW/A) and deposed that the plaintiff was not his neighbour.

Defendant No.1, Mahabir, appeared as DW7 in support of the stand taken in the written statement. Similarly, defendant No.2, Chander Bhan, appeared as DW8 and corroborated the same.

6. After appraising the evidence, the learned Additional Civil Judge (Senior Division), Rohtak, vide his judgment dated 14.3.2013, found that it being a suit for permanent injunction only, the plaintiff had not been able to prove his exclusive possession over the western portion of the suit house, inasmuch as, other than his own testimony to that effect, he had also not been able to prove the site plan (Ex.P1), as the Draftsman of the site plan was not produced to prove it.

7. On the other hand, the defendants had led evidence to show that they were in exclusive possession of the suit property, i.e. House No.169 of Ward No.7, in Village Bhalaut.

8. As regards the prayer of the plaintiff, restraining the defendants from alienating his share in the suit property, it was held by the learned Civil Judge, that no person can pass a better title than he himself has and as such, the defendants would only be able to sell any part of the suit property

as fell to their own share.

Holding as above, the suit of the plaintiff was dismissed.

9. In the first appeal filed before the learned Additional District Judge, Rohtak, essentially the same reasoning was given to dismiss the appeal of the plaintiff.

10. Before this Court, learned counsel for the appellant drew attention of the Court to the plaint and written statement, as also the judgments in the previous litigation filed by Jai Narain and another, against the predecessors-in-interest of the plaintiff and the defendants (culminating in the judgment dated 20.5.1959, in RSA No.681 of 1954). He submitted that the suit property, admittedly being ancestral, half of it fell to the share of the plaintiff, which fact has not been appreciated by the Courts below.

11. Having heard learned counsel for the appellant in detail and having perused the judgments and the evidence led before the Courts below, as produced by the learned counsel in Court today, the first thing that is evident is that the defendants have claimed only to be in possession of House No.169 in Ward No.7, of Village Bhalaut, whereas the plaintiff, even as per his ration card (Ex.P2 before the Courts below), is shown to be in possession of House No.170 in Ward No.7 of the said village.

That apart, I see no error in the judgments of the Courts below in holding that, other than the plaintiffs' own testimony, no other evidence was led by him to show that he was actually in possession of any part of House No.169 of Ward No.7. That being a finding of fact, not shown to be perverse, in any case, I see no question of law that is involved, to adjudicate which this Court should entertain this second appeal.

Other than the fact that the learned Civil Judge (Senior Division), has also held that the defendants could not alienate the suit property beyond that which they owned, it needs to be reiterated that the suit filed was one seeking permanent injunction and not one seeking a declaration. Hence, with the appellant-plaintiff not having proved his possession of any part of House No.169, Ward 7, I see no error in the judgments of the Courts below, in refusing to grant any injunction against the defendants, they having been shown to be in possession of the suit property.

Naturally, if any such suit for declaration is brought, it would be decided on its own merit, keeping in view all parameters.

12. With the aforesaid observations and reiterating the fact that the plaintiff is shown to be in possession of House No.170 in Ward No.7 of Village Bhalaut, finding no merit in this appeal, it is dismissed in limine, with no order as to costs.

28.5.2016
pk

(AMOL RATTAN SINGH)
JUDGE