

RSA No. 2082 of 1987 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 2082 of 1987 (O&M)

Date of Decision: 14.2.2017

Punjab State and another

.....Appellants

Vs.

Manjit Kaur

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Baljinder Singh Sra, Additional A.G. Punjab
for the appellants.

None for the respondent.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 6.2.1987 passed by learned District Judge, Bathinda, dismissing first appeal of the defendants and upholding impugned judgment and decree dated 2.5.1986 passed by learned trial court, whereby suit for permanent injunction filed by the plaintiff-respondent was decreed, unsuccessful defendants have approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned trial court in para 2

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of its impugned judgment, are that plaintiff was the owner in possession of the property, fully described in the heading of the plaint, and it was purchased by her through a registered sale deed No. 201 on 10.4.1978 from one Gian Chand son of Dad Ram of Bathinda. It was alleged that after purchasing the suit property, plaintiff had constructed a house over it and plan for construction of the house over the suit property was duly sanctioned by the Municipal Committee, Bathinda. It was further alleged that the defendants had no concern or title on the suit property, as the plaintiff was owner in possession of the suit property and was enjoying peaceful possession, but the defendants, in order to cause wrongful loss to the plaintiff, were trying to take forcible possession of the suit property from the plaintiff and were also trying to demolish the house constructed by the plaintiff on the suit property for which the defendants had no right and in case the defendants would succeed in demolishing the house and taking forcible possession of the suit property from the plaintiff, she will suffer an irreparable loss.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial court framed the following issues.

1. Whether the plaintiff is owner in possession of the property in dispute and he purchased the said property vide sale deed dated 10.4.78 ?OPP.
2. Whether after the purchase of the plot the plaintiff constructed the house on the property in dispute after getting a sanction from the Municipal Committee,

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Bathinda? OPP

3. Whether the present suit is not maintainable since notice under Section 80 of the C.P.C. has not been served? OPD.

4. Whether the land in dispute is a part of khasra No. 4388 and is owned by the defendants? OPD

5. Whether the plaintiff is entitled to the injunction prayed for? OPD.

6 Relief.

With a view to prove their pleaded case, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has duly proved her case. Accordingly, her suit for permanent injunction was decreed, vide impugned judgment and decree dated 2.5.1986. Dissatisfied, defendants filed their first appeal which also came to be dismissed vide impugned judgment and decree dated 6.2.1987. Hence this regular second appeal, at the hands of the defendants.

Notice of motion was issued vide order dated 18.8.1987. Thereafter, appeal was admitted for regular hearing vide order dated 28.7.1988, however, without formulating any substantial question of law.

Heard learned counsel for the appellants.

During the course of hearing, when asked to point out any question of law much less substantial question of law, which is sine qua non for entertaining regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil

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Procedure, learned counsel for the appellants-State had no answer and rightly so, it being a matter of record.

In fact, a bare perusal of the impugned judgments and decrees would make it crystal clear that learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld. It is also a matter of record that claim of the plaintiff was based on registered sale deed dated 10.4.1978. Appellants-defendants neither filed any counter claim, so as to challenge the validity of this sale deed dated 10.4.1978, nor they could dislodge the authenticity thereof, while leading their evidence. Thus, ownership of the plaintiff was duly established on record on the basis of undisputed sale deed dated 10.4.1978 and accordingly, findings on issues No.1, 2 and 4 were rightly returned in favour of the plaintiff and against the defendants.

Further, plaintiff was found to be a bonafide purchaser for due consideration vide registered sale deed dated 10.4.1978 (Ex.P1) and this fact has gone undisputed. On the basis of the abovesaid bonafide purchase, plaintiff raised construction on the suit property and that too, after getting the building plan sanctioned from the Municipal Committee. Having said that, this Court feels no hesitation to conclude that learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, learned first appellate court re-appreciated facts as well as evidence available on record in the correct perspective. Findings recorded by learned first appellate court have also been found factually correct and legally justified, which call for no

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interference at the hands of this Court. Cogent findings recorded by learned first appellate court in para 10 to 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“Now reverting to the merits of the case, I find that the plaintiff while appearing as PW1 stated on oath that she is the owner of 311 square yards of land having purchased vide registered sale deed, the copy of which is Ex.P1 from Gian Chand for Rs. 4,000/-. She obtained the sanction from the Municipal Committee, Bhathinda, the copy of which is EX.P2, the copy of the jamabandi is Ex.P3. Jarnail Singh is the executant of Ex.P2. He executed the sale deed as a General Attorney of Gian Chand s/o Sada Ram regarding the property in dispute. The sale deed Ex.P1 is thus duly proved from the statement of the executant PW2. A reference to the map Ex.P2 shows that the Municipal Committee had accorded the sanction to the plaintiff/respondent for raising construction over the plot. Further, a reference to Ex.P3, the copy of the jamabandi for the year 1977-78 shows that Gian Chand son of Sada Ram was a owner to the extent of 1/6th share in the land comprised in khasra No. 4380 min (0-6). The name of the plaintiff figures in column No.5 of the Jamabandi as a purchaser from Gian Chand co-owner.

The defendants’ evidence on the other hand consists of the statement of DW1 Sadhu Lal Grover, S.D.C., B&R, Bhatinda, who deposed that the suit property is owned by the PWD whereas the Surjit Singh son of Natha Singh had encroached upon the land measuring 316 square yards. The demarcation of the land was obtained through Madan Singh, Field Kanungo. However, the could not say with regard to the total area of Khasra No. 4380. DW2 Madan Singh Kanungo had

only proved the demarcation report Ex.D1 and Ex.D2. Ex.D3 is the copy of the jamabandi for the year 1977-78 pertaining to khasra No. 4380 and 5109.

Here is a case of jamabandi versus jamabandi. The copy of the jamabandi Ex.P3 shows that the plaintiff's property is situated in khasra No. 4380 min (0-6) whereas the copy of jamabandi Ex.D3 shows that the land of the defendant/appellant is comprised in khasra No. 4380 and 5109. Thus a reference to Ex.P3 and Ex.D4 shows that khasra No.4380 is a bigger khasra number and a small portion out of it is owned by private individuals as is evident from Ex.P3. The land of the plaintiff is in 4380 min. No attempt has been made by the defendant/appellants to show as to how much is the entire area of the khasra No. 4380. The copy of the Field Map had not been produced. The report Ex.D2 submitted by DW2 is liable to be ruled out of consideration due to the reason, the same being not in accordance with instructions issued by the Financial Commissioner, Punjab. The said instructions are contained in the High Court Rules and Orders Vol. 1 Chapter IM (C) which deals with Had Sikmi cases and lays down the procedure to be followed by the Revenue authorities for the demarcation of the land where there is a case of boundary dispute. The case in hand, I find is nothing but a case of boundary dispute. None of the parties in the case had tried to get the land demarcated in accordance with the abovesaid provisions in the High Court Rules. No Local Commissioner was got appointed. However, when both the parties have led their evidence, the question of onus is buried in the ground. Both the appellants and the respondent are, therefore, the owner of the respective property. The plaintiff/respondent had succeeded in proving her title to the property. The

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maintainability of the suit is to be seen with regard to the allegations contained in the plaint, the defendant is immaterial. The plaintiff had only sought injunction with regard to the land situated in khasra No. 4380 min, fully detailed and described in the heading of the plaint. Her claim was not based with regard to any part of the land comprised in any other khasra number. Therefore, the findings of learned lower court on issue No.1, 2 and 4 are perfectly correct and are hereby affirmed.

Having found the plaintiff to be the owner in possession of the suit property, she can on the basis of the title certainly resist any interference in her possession by any out sider. Even the appellants had admitted that the plaintiff is in possession of the property. Assuming the plaintiff to be a trespasser still she cannot be ejected from the property forcibly. However, her case stands on a better footing than the trespasser. The findings of the learned lower court on issue No.5 are, therefore, affirmed.”

Learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments rendered by learned courts below. As noticed above, he also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon’ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case

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noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

14.2.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No