

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

**RSA No. 2562 of 2008 (O & M)
Date of Decision:-20.2.2017**

Jug Lal

...Appellant

Versus

Prahlad Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Ajay Jain, Advocate
for the appellant.

Mr. C.B. Kaushik, Advocate
for respondents No.1 to 5.

HARI PAL VERMA J.

The appellant-plaintiff (hereinafter 'the plaintiff') has filed the present regular second appeal against the judgment and decree dated 09.4.2008 passed by the learned District & Sessions Judge, Narnaul, whereby his appeal against the judgment and decree dated 09.8.2007 passed by learned Additional Civil Judge (Senior Division), Mohindergarh was dismissed.

Briefly stated plaintiff has filed a suit for permanent injunction

restraining the defendants from interfering and demolishing the construction raised in the suit property. The plaintiff has claimed that he was residing in the suit property as described in para 1 of the plaint for the last about 50 years and therefore is owner in possession of the same. He has constructed house over it but the defendants are bent upon to interfere with the possession of the plaintiff and carved out a passage through that land. Plaintiff's grand-father Hanuwant alias Hanuta and Puran son of Darsu, resident of Thanwas had a sister namely Bai, who was married with Jokhi resident of Village Nichi Bhandor. She had a son namely Jaharia. Jokhi died when Jaharia was only 4-5 months old. Therefore, Bai took her brothers Puran and Hanuwant to Village Nichi Bhandor. Jaharia being nephew (sister's son) of Hanuwant and Puran used to reside with them. At the time of mutual partition Ahta No.10 was given to Hanuwant, but the settlement officials on the basis of wrong information showed it to be owned by Jaharia, whereas it was occupied by Hanuwant. Thus, the suit property falls in Ahta No.10, which was owned and possessed by Hanuwant son of Dharsu, whose legal heirs were Nand Ram, Ganga Shai, Data Ram, Sheo Lal and Sohan Lal. The plaintiff was residing in the disputed plot since the time of his forefathers and defendants have no concern with the same. The defendants being strong headed persons want to make rasta through the disputed property and interfere in plaintiff's ownership and possession without any right.

The suit was contested by the defendants, wherein objection of maintainability was pleaded. The pleaded case of the defendants is that

plaintiff has no concern with the suit property and the site plan is incorrect. The plaintiff is resident of Thanwas (Rajasthan). He purchased plot No.117 vide sale deed No.2590 dated 18.12.1989 from Chandgi Ram son of Data Ram son of Hanuta. Plaintiff had filed suit No.521 titled 'Bishna Ram versus Budh Ram' and Civil suit No.42 titled 'Juglal versus Bishna Ram'. Plaintiff had made a statement that he has purchased only plot No.117. Thereafter, the plaintiff had filed Civil Suit No.545 titled 'Jug Lal versus Bishna Ram', which was dismissed. The plaintiff had no concern with Ahta No.10 and in the suit property, the defendants have constructed their residential houses. The possession and ownership of Hanuwant on Ahta No.10 is denied.

From the pleadings of the parties, following issues were framed by the learned trial Court vide order dated 17.11.1999 :-

- “1. Whether the plaintiff is entitled to the relief of injunction as prayed for ? OPP
2. Whether the plaintiff is concealed material facts from the Court if so its effect ? OPP
3. Whether the plaintiff has no cause of action to file the present suit ? OPD
4. Whether the plaintiff has no locus standi to file the present suit ? OPD
5. Whether the defendants are entitled to special costs under Section 35-A of CPC ? OPD
6. Relief.”

On the basis of the amendment of the pleadings, following issues were framed by the learned trial Court vide order dated 23.7.2004 :-

- “1. Whether the plaintiff is in lawful possession over the suit

property and is entitled to injunction as prayed for ? OPP

2. If issue No.1 is proved whether suit property is a part of Ahta No.10 as alleged ? OPP
3. Whether the plaintiff has concealed the material facts from the Court ? OPD
4. Whether the plaintiff has no locus standi to file the suit ? OPD
5. Whether the defendant is entitled to special cost under Section 35-A of CPC ?
6. Relief.”

The Civil Court vide judgment and decree dated 09.8.2007 dismissed the suit of the plaintiff and observed :-

“12. Unless the plaintiff specifically proves his exclusive possession over the specific portion, no injunction can be granted. Moreover, where in a suit injunction is sought on the basis of title and title is not proved, the plaintiff is not entitled to injunction also as in that case the plaintiff does not come to the Court with clean hands. A person who does not come before Court with clean hands is not entitled any relief from the Court. In this view of the matter, the plaintiff has not been able to prove his possession over the suit property and is not entitled to injunction as prayed for. Issue No.1 is decided in favour of the defendants and against the plaintiff. In view of the admitted situation of the property in Ahta No.10, there is no dispute about it. So, issue No.2 is decided against the defendants and in favour of the plaintiff.”

Aggrieved against the judgment and decree dated 09.8.2007,

the plaintiff had filed an appeal. The appeal was also dismissed by the learned Appellate Court and held :-

“As seen above plaintiff Jug Lal, while appearing in the witness box as PW2, admitted that the house of defendant Bishna Ram exists in Ahata No.10. He further made clear that this house was constructed 40-50 years ago. To repeat, he admitted that the suit instituted by defendant Bishna Ram against him regarding rasta No.122 has already been decreed. (However, appeal is pending adjudication). He further testified that the suit instituted by him with regard to plot No.117 has already been dismissed. He also made clear that the entries with regard to Ahata No.10 in the settlement record are in the name of Jaharia. However, there is nothing to show as to how the plaintiff is related to said Jaharia who is admittedly the owner of the suit property according to record. Plaintiff admitted in the cross-examination that he does not possess any documentary proof regarding ownership of this property. So far as the report of local commission is concerned, the Court had not asked him to comment as to which party was in possession of the suit property. He was simply directed to visit the spot after prior notice to both the parties and to report about the position existing there. A perusal of report shows that the local commission took care to summon the parties only after reaching the village. He mentioned in the report that the defendants were not found available in the village.

He, thus, failed to give prior notice to the parties and conducted the spot inspection in the absence of the defendants. He apparently exceeded his jurisdiction by making a comment about the possession of the suit property and as such no value can be attached to this report. There is apparently no evidence on the file to prove that the plaintiff is in possession of the suit property and that being so he is not entitled to the relief of injunction. In the circumstances, I uphold the findings of learned trial Court and as a result the appeals stands dismissed with costs. Decree-sheet be prepared accordingly. Trial Court record be sent back with a copy of this judgment. Appeal file be consigned to the record room after compliance.”

It is in the aforesaid circumstances the appellant-plaintiff has filed the present appeal.

Learned counsel for the appellant has argued that the Courts below while dismissing the suit filed by the plaintiff have ignored the vital facts. The plaintiff had simply filed a suit for permanent injunction and therefore he was only required to prove his possession over the suit property. Ram Niwas Sharma, who was appointed the Local Commissioner by the learned trial Court, has established the possession of the plaintiff over the suit property, as he was found having his residence in the house existing there. But the report submitted by the Local Commissioner has been ignored. The Local Commissioner has categorically stated that the suit property comprising in letters mark ABCDEF shown in the site plan

enclosed of which in letters mark CDEF the plaintiff has constructed a house and is residing therein and the other land mark ABCF a *chhappar* has been constructed, which has duly established his possession over the suit land. He has referred to judgment dated 06.11.2012 passed in RSA No.1937 of 2006 titled 'Jug Lal vs. Bishna Ram and others' whereby this Court by upholding the decrees of the Courts below to the extent of restraining the defendants by way of permanent injunction from creating any hindrance/obstacle etc. in the disputed passage comprised of Khasra No.122 and held that the plaintiff was entitled to execute the decree for removal of obstacle/hindrance and construction, if any, found in the disputed passage. He has further argued that the Courts below have erred in holding that the plaintiff is claiming adverse possession, ignoring the contention raised by the plaintiff that he has only claimed the relief of permanent injunction.

On the other hand, learned counsel for the respondents has argued that the suit filed by the plaintiff was not maintainable as the plaintiff has claimed inheritance from Jaharia and despite the fact that he has five sons, the plaintiff has not impleaded them. So far as the report of the Local Commissioner is concerned, the same has been duly considered by the Courts below and was rightly ignored as the same was not prepared in accordance with law, as the Local Commissioner has not given any notice to the defendants. The Local Commissioner was not authorized to give any finding about the ownership and possession. In this manner, the Local Commissioner has acceded his jurisdiction. He has further argued

that so far as the judgment in RSA No.1937 of 2006, decided on 6.11.2012 titled 'Jug Lal vs. Bishna Ram and others' is concerned, the same relates to different properties i.e. passage comprised of Khasra No.122 and not Ahata No.10, which is subject matter of dispute in the present case.

I have heard learned counsel for the parties.

The plaintiff while appearing as PW2 had admitted that in Ahata No.10, the house of the defendant Bishna Ram exists and the said house was constructed 40-50 years back. The entries with regard to Ahata No.10 in the settlement record are in the name of Jaharia, but the plaintiff has failed to establish as in what manner he is related to said Jaharia, who is admittedly owner of the suit property, as per the record. Thus, without establishing his right, the plaintiff has rightly been held disentitled for the relief claimed in the suit. Interestingly, the plaintiff has not impleaded the said Jaharia or his legal heirs i.e. his five sons, though he has claimed that he has inherited the right from Jaharia.

Similarly, the report of the Local Commissioner has rightly been discarded by the Courts below as neither the Local Commissioner was empowered to record a finding regarding ownership and possession and secondly the report was prepared at the back of the defendants. The report was prepared without associating the defendants. No notice of his proposed visit was ever given to the defendants. Nothing has come on record to establish that the plaintiff was in possession of the suit property, therefore, unless his possession is established, he is not entitled to the relief of injunction.

Therefore, this Court does not find any illegality in the judgments and decrees passed by the Courts below, which is based on concurrent findings of facts. There is no substantial question of law involved in the present appeal.

No other point is argued.

The regular appeal is hereby dismissed.

February 20, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No