

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1015 OF 2010
Date of Decision:14.12.2017

Jaswant Singh @ Billu

...Appellant

Versus

Nobat Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Jai Vir Yadav, Advocate for the appellant.
Mr.O.P.Goyal, Sr. Advocate with
Ms.Ritika Gupta, Advocate for respondents No.1 to 4.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the judgment passed by the learned first appellate court.

Plaintiff filed a suit for permanent injunction, restraining defendants No.1 and 2 from interfering into his peaceful possession. It was further prayed that in case defendants No.1 and 2 succeed in their illegal design and make encroachment over the property then a decree for mandatory injunction be passed, restoring the plaintiff to its original possession along with the decree for mesne profit @ Rs.500/- per month.

It is a case of the plaintiff that he took on lease the land measuring 20 feet X 10 feet, i.e. 200 square feet situated on Mohindergarh-Rewari Road and constructed two shops of 10 feet X 10 feet each. Defendant No.1 herein, filed a previous suit against the plaintiff herein, which was dismissed on 18.2.1994, while recording findings that the plaintiff herein was in possession of two shops (20 feet X 10 feet each),

whereas defendant No.1 herein (plaintiff in the earlier suit) was held to be in possession of Khokha measuring 10 feet X 10 feet only.

Defendants contested the suit and claimed that the frontage of the shops of plaintiff on the road is only to the extent of 10 feet and not 20 feet. It was further pleaded that defendant No.2 after depositing transfer fee got the property transferred from defendant No.1 in his name. He further pleaded that now he has enhanced the area to 400 square feet.

The learned trial court chose to dismiss the suit. However, the learned first appellate court, after re-examining the evidence available on the file, decreed the suit filed by the plaintiff.

I have heard the learned counsel for the parties at length and with their able assistance gone through the impugned judgment passed by the first appellate court as well as the records.

Learned counsel for the appellant has submitted that a reading of the statement of Dayanand, Clerk of the Panchayat Samiti, shows that the defendant-appellant was leased out the property in dispute. He has further submitted that the suit for injunction could not be filed as the plaintiff was not in possession of the area measuring 20 feet X 10 feet. He has further submitted that construction was raised by defendant No.2 much prior to the filing of the suit.

On the other hand, learned counsel for the respondent has submitted that the learned first appellate court had found, as a matter of fact after examining the evidence in detail, that it was the plaintiff, who was given on lease the land measuring 20 feet X 10 feet, having frontage of 20 feet on the main road. He has further relied upon the judgment passed in the

previous suit dated 18.2.1994. He has further drawn attention of the Court to Ex.P13, the application submitted by defendant No.1, to prove that there was an interpolation by defendant No.1

In the present case, the learned trial Court appointed a Local Commissioner, who visited the spot on 5.2.1999. He reported that work of construction was going on. No objection to the report of the Local Commissioner was filed by the defendant-appellant, therefore, the argument of the learned counsel for the appellant that construction had been raised before filing of the suit cannot be accepted.

Learned counsel for the appellant has referred to the statement of Dayanand, PW-5, wherein he deposed that the shop allotted to the plaintiff was 10 feet X 20 feet, having 10 feet width and 20 feet length.

In my considered opinion, learned counsel for the appellant has clearly overlooked the judgment passed by the Civil Court on 18.2.1994. Defendant No.1 in the present suit had filed a previous suit, claiming that he is in possession of land measuring 21 feet on the main road, having constructed two shops. Defendant No.1 failed to prove that fact. In the earlier litigation a finding was recorded that in fact plaintiff in the present suit, who defendant in the previous suit, had constructed two shops in an area measuring 200 square feet having frontage of 20 feet. In the previous litigation, the learned trial court framed Issue No.2, which reads as under:-

“2 Whether the defendant No.1 had constructed two shops on taking a land measuring 200 S. Yard on rent in the year 1975 if so to what effect? OPD”

This issue was decided in favour of the plaintiff herein. The

Court further recorded that the plaintiff in the previous suit (defendant No.1

herein) is not in possession of the suit property and therefore, he is not entitled to any injunction.

Defendant No.2-appellant is claiming right through defendant No.1, who has already lost against the plaintiff in the civil suit.

Still further, a look at Ex.P-4 would show that Panchayat Samiti Kanina, defendant No.3, had issued a notice to the plaintiff in the present case with respect to land measuring 20 feet X 10 feet, having frontage of 20 feet on the road. This document is much before filing of the present suit. Further, the learned first appellate court has rightly noticed that defendant has interpolated the application Ex.P13, which is apparent from the naked eye.

In view of the aforesaid findings, this Court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate court.

Dismissed.

14.12.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No