

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

RSA-325-2010(O&M)

Date of Decision:06.09.2017

PUDA(Greater Ludhiana Area Development
Authority) through its Estate Officer

.....Appellant

Versus

Janta Estates and Housing
Development Limited
through its Director

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Harit Sharma, Advocate,
for the appellant.

Mr.Santosh Sharma, Advocate,
for the respondent.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful defendant No.1 is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for permanent injunction filed by the plaintiff was decreed by the learned trial court vide its impugned judgment and decree dated 09.12.2005 and first appeal filed by the defendants was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 27.03.2009, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 and 3 of its impugned judgment, are that respondent Janta Estate (hereinafter to be called as plaintiffs for convenience) filed a suit against appellants Punjab Urban Development Authority etc. respondents

(hereinafter to be called as defendants for convenience) for permanent

injunction restraining the defendants from interfering or encroaching on or dispossessing the plaintiffs illegally and forcibly except in due course of law from the suit land measuring 12B-3B-14B Pukhta comprised in khewat No.40, Khatauni No.49, Khasra No.2564/253, 254 and Khewat/Khatauni No.241/324, Khasra No.2575/269/270 as per Jamabandi for the year 1992-93 situated at village Dhandra, Tehsil and Distt. Ludhiana.

The case of the plaintiff, in brief, was that plaintiff is a Ltd. Company and is registered with the Registrar of the companies; that plaintiff purchased the suit land vide 28 registered sale-deeds detailed in the plaint on different dates and plaintiff is in exclusive possession of the suit property without any interruption and continuously since its purchase and mutation has already been sanctioned; that plaintiff also got sanctioned the site plan from the defendants regarding the suit property; that property of the defendants is situated on the northern side of the property of the plaintiff and officials of the defendants started creating troubles and hurdles in the use and enjoyment of the property of the plaintiff without any right as defendants wants to encroach upon the suit land comprised in Khasra No.269; that plaintiff requested the defendants not to interfere or to encroach but officials of the defendants refused to admit the request of the plaintiffs which compelled the plaintiff to file the suit in hand.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to the injunction as prayed for?OPP*
- 2. Whether plaintiff has no cause of action to file the*

present suit?OPD

3. *Relief.”*

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has duly proved his case. Accordingly, suit for permanent injunction filed by the plaintiff was decreed by the learned trial court vide its impugned judgment and decree dated 09.12.2005. Defendants felt aggrieved and filed their first appeal, which was also dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 27.03.2009. Hence, this regular second appeal, at the hands of unsuccessful defendant No.1.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that suit of the plaintiff was based on as many as 28 sale-deeds, which were brought on record vide Exs.PW2/4 to PW2/31. In fact, ownership and possession of the plaintiff-respondent on khasra Nos.2564/253/254 and khasra Nos.2575/269/270 was admitted by the defendants, while filing their written statement. Admission being the best evidence, plaintiff was not required to lead any evidence. Ownership as well as possession of the plaintiff was admitted by the defendants in their written statement. However, still the plaintiff brought on record sufficient and cogent evidence. Accordingly, his suit was rightly decreed by the learned trial court.

Defendants failed to make out any case even before the learned

first appellate court and accordingly, their first appeal was also rightly

dismissed by the learned Additional District Judge. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, the learned first appellate court has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent and convincing relevant findings recorded by the learned Additional District Judge in para 11 to 13 of his impugned judgment, which deserve to be noticed here, read as under:-

“The case of the plaintiff is very specific that he is owner of Khasra No.2564/253/254 and Khasra No.2575/269/270 as detailed in the plaint. Defendant in so many words has admitted the ownership of the plaintiffs in the suit land in the written statement. It is mentioned in para N.2 of the written statement that defendant has no concern with the land forming part of two khasra numbers i.e. Khasra No.2564/253/254 and Khasra No.2575 i.e. suit land, again in para No.3 of the written statement that land of the defendants is situated on the northern side of the land belonging to the plaintiffs. It is further mentioned in para No.5 of the written statement that defendants have no intention to interfere in the land of the plaintiff and in para No.6 of the written statement, it is mentioned that no official of the defendants tried to interfere in the possession of the property belonging to the plaintiff and in para No.7 of the written statement, it is mentioned that the defendants have not taken any steps to interfere in the land owned by the plaintiffs. As such, ownership of the plaintiff in the suit land has been duly admitted by the defendants in the written statement. Otherwise, also, mutation has been sanctioned on the basis of the sale-deed proved on the file

by the plaintiff and plaintiff is shown as co-sharer in the suit land as is apparent from the copy of Jamabandi Ex.D2 and D3 proved on the file by the defendants itself. As such, even if no witness of the sale-deed has been examined by the plaintiff, it does not effect the ownership of the plaintiff.

It is correct that a local commissioner was appointed in this case who gave report that plaintiff has encroached land measuring 0-1-3, out of khasra No.2574/269. However, Khasra No.2574/269 does not form part of the suit land. As such, this report is irrelevant so far the present suit is concerned and the same has not been rightly taken into consideration by the Ld. Lower court.

Otherwise, the plaintiff is owner in possession of the suit land and it is the allegation of the plaintiff that defendants are interfering in the possession of the plaintiff in the suit land. As such, plaintiff was entitled to the relief of permanent injunction as prayed for in the suit and it has been rightly decreed by the Ld. lower court.”

It is also not in dispute that the defendants did not file any counter-claim. The only argument raised by learned counsel for the appellant in this regard was that once the plaintiff was found to have encroached upon land measuring 1 kanal 3 marla, out of khasra Nos.2574/269 as per report of the Local Commissioner, the learned courts below ought to have directed the plaintiff to remove the encroachment. It was for this reason that the defendants ought to have filed their counter-claim, if they were so aggrieved.

Since khasra Nos.2574/269 was not part of the suit property, coupled with the fact that the defendants despite having an occasion to do so, did not file their counter-claim in this regard, no such direction could have been issued to the plaintiff by the learned courts below. Under these

undisputed circumstances of the case, it can be safely concluded that the

learned courts below committed no error of law, while passing their impugned judgments and decrees and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any 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 Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

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

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

September 06, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No