

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

RSA No. 2451 of 2013 (O&M)

DATE OF DECISION : 04.12.2017

Naresh Singh Pathania

.... APPELLANT

Versus

Shiv Dev Singh Pathania

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Vishal Aggarwal, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

This regular second appeal has been filed at the behest of the defendant.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

Though this appeal is accompanied with an application (CM No. 6653-C of 2013) for condonation of delay of 11 days in filing the appeal, yet the learned counsel for the appellant has been heard on merits.

A suit for possession of the plot, detailed in the plaint, was filed. The said plot is part of land in khewat No. 217, khatoni No. 568 and khasra No. 1769 (0-14) situated in village Dunera, Tehsil Dhar, District Gurdaspur.

The facts, as per the plaint, are that the plaintiff being a co-owner having 1/3rd share in the suit land, marked as ABCDEF and shown in red colour in the site plan, attached to the plaint, filed the suit. The defendant had no right, title or concern with the suit land, but had illegally and forcibly, by taking advantage of the absence of the plaintiff from the village, took possession of the suit land. The suit land is part of land in khewat No. 217, khatoni No. 568 and khasra No. 1769 (0-14) situated in village Dunera, Tehsil Dhar, District Gurdaspur, and was entered in the jamabandi for the year 1993-94. The plaintiff had requested the defendant to admit his claim and to vacate the possession of the suit property after removal of *khokha* but the defendant refused. Therefore, the suit was filed.

Upon notice, the defendant filed written statement. Apart from taking preliminary objections, it was stated that the site plan filed with the plaint was incorrect as shop of the defendant is not part of khasra No. 1769. It was stated that rather the shop was situated on the land bearing khasra No. 1772/2, khewat No. 48 and the said land is owned by the grand-father of the defendant, namely Ranjodh Singh. It was further averred that the shop was there for more than 12 years and an electricity meter in the said shop was also installed for the last more than 8 years.

Replication was filed by the plaintiff.

The learned trial court framed the following issues :-

1. Whether the plaintiff is co-owner of the suit land? OPP
2. Whether the plaintiff is entitled to the decree for possession as prayed for? OPP

3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the site plan attached with the plaint is incorrect? OPD
6. Relief.

In order to prove his claim, the plaintiff examined PW.1 Madan Mohan Gupta, Chief Engineer, Dharamshala. He proved the site plan Ex.P1 and his signatures on the same. Ranjodh Singh was examined as PW.2 and the plaintiff himself deposed as PW.3.

The defendant, in order to rebut the claim of the plaintiff, examined Narinder Singh, Draftsman, as DW.1. Naresh Singh defendant and Karor Singh appeared as DW.2 and DW.3, respectively. Copies of jamabandi and khasra girdawari were produced as Ex.P8 and Ex.P9.

The learned trial court, after considering the facts and the evidence produced, decided issues No.1 and 2 against the plaintiff. Issues No.3 and 4 were decided in favour of the defendant. Issue No.5 was also decided in favour of the defendant. The net result was that vide judgment and decree dated 06.10.2009, the suit was dismissed.

Aggrieved of the aforesaid judgment and decree, the plaintiff filed an appeal. The learned first appellate court, after re-appreciating the facts and evidence, reversed and modified the findings of the learned trial court on issues No.1 and 2. Issues No.3, 4 and 5 were decided against the

defendant. The appeal was allowed vide judgment and decree dated 17.12.2012. Resultantly, the suit was decreed for possession of the suit land.

Hence, the present Regular Second Appeal by the defendant.

In the present appeal, the following five substantial questions of law have been framed :

- (i) Whether the appeal of the plaintiff could have been allowed decreeing his suit when it is well established that the shop in his possession is not situated over the land of the plaintiff?
- (ii) Whether it can be held that the plaintiff is in possession of shop situated over the land of the plaintiff in the absence of any demarcation by the revenue authorities?
- (iii) Whether the learned courts below have misread and misconstrued the evidence on record?
- (iv) Whether the plaintiff/respondent has taken contradictory pleas in the suit and the suit deserves to be dismissed on that ground alone?
- (v) Whether impugned judgment and decree passed by the learned courts below is sustainable in the eyes of law?

At the time of arguments, learned counsel only contended that since the plaintiff failed to prove that the *khokha* of the defendant was on his (plaintiff's) land, i.e. khasra No.1769, therefore, in such circumstances, the learned appellate court erred in allowing the appeal.

No other issue was raised or argued.

It would be pertinent to note that earlier also, this *khokha* of the defendant had been in dispute. It has come on record, as rightly relied upon by the learned first appellate court, that in the proceedings undertaken before Sub Divisional Magistrate exercising the powers of Collector, Dhar Kalan, under Sections 4 and 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in the zimni order dated 15.09.2009 (Ex.DY), it was mentioned that the defendant had raised unauthorized shop over the land owned by the Punjab PWD (B&R). The claim of the defendant in the suit was that his shop is not on the land bearing khasra No. 1769, but is on land bearing khasra No. 1772/2, which is owned by his grand-father Ranjodh Singh.

The said Ranjodh Singh deposed as PW.2. He stated that the disputed *khokha* has been constructed in the suit land owned by the plaintiff and other co-sharers. He further deposed that the said *khokha* has been constructed by making encroachment. He denied that the defendant is his grand-son or is related to him in any manner.

It is important to note at this stage that there is no dispute between the plaintiff and Ranjodh Singh with regard to the boundaries of their respective plots. There is no dispute regarding the ownership of khasra Nos. 1769 and 1772/2. The plaintiff and PW.2 Ranjodh Singh have deposed that the *khokha* has been constructed in the land bearing khasra No. 1769 and it is by way of encroachment. The defendant basically relied upon the

electricity bills to show that he was having an electric connection in his *khokha* for the last 8 years. The learned trial court heavily relied upon the electricity bills to dismiss the suit by holding that it was not proved by the plaintiff that the *khokha* is on the suit land, rather the electricity bills proved that the *khokha* was there for the last 8 years. The learned trial court erred in relying upon the electricity bills, because as rightly held by the learned appellate court, the electricity bills give no address or detail to show that the *khokha* is constructed on land falling in rectangle No. 1772/2.

The defendant basically raised a plea that his *khokha* was on the land jointly owned by him and his grand-father Ranjodh Singh. The ownership of Ranjodh Singh with regard to the land in rectangle No. 1772/2 has not been disputed. Ranjodh Singh while appearing as PW.2 specifically denied having any relation with the defendant. The defendant keep on changing his stand from time to time and he himself brought on record the proceedings taken against him for encroachment upon the Government land.

The present case appears to be a classic example where an encroacher by taking technical and false pleas has been avoiding removal of his *khokha* on the encroached land way back from the year 1999.

The plaintiff had duly proved ownership of his land bearing khasra No. 1769. His deposition along with the statement of PW.2 Ranjodh Singh clearly establish that the defendant had encroached upon the land of the plaintiff. In such circumstances, no fault can be found in the judgment and decree passed by the learned first appellate court.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant second appeal is dismissed, however, with no order as to costs.

December 04, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes