

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.3336 of 2013 (O&M)
Date of Decision: 26.07.2017**

Kishan Chand

... Appellant

Versus

Ram Pal and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Bhupinder Banga, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1. The defendant is in appeal. The plaintiff has succeeded in the first court and defendant's appeal has been rejected and thereby the judgment and decree dated March 03, 2010 passed by the Additional Civil Judge (Senior Division), Dasuya stands affirmed. The appeal arises out of the judgment of the learned Additional District Judge, Hoshiarpur dated September 13, 2012.

2. The facts in brief are that the plaintiffs filed a suit against defendant Jeeto and others for permanent injunction restraining them from changing the nature of the suit property and for using it for any other purpose except the purpose reserved for "Awa" for the Ghumar Community and a prayer was also made for a mandatory injunction to the defendants to remove the encroachment over the suit property.

3. The plaintiffs belong to the Ghumar Community (potters). The

suit property was reserved as Awa during consolidation proceedings in the village. The trial Court has decreed the suit on a finding of fact recorded and duly supported by the Jamabandies Exs.P-3 & P-4 indicating that the suit property is duly reflected in the possession of the Ghumar Community since 1958-59.

4. The plaintiffs produced on record revenue documents including Jamabandi for the year 1998-99 Ex.P-1 which revealed that ownership of property comprising Khasra No.197 (1K-4M) is recorded in column 8 in the name of Makbuja Malkan meaning thereby in possession of the community the plaintiffs belong to and is shown in cultivating physical possession of suit the property as Makuja Ghumar. Column 8 of the Jamabandi reflects the suit property as Gair Marusi Awa. The same is the position in the Jamabandi for the year 1968-69 and onwards.

5. When called to lead evidence, the defendants failed to produce any documentary evidence to assert their rights over the suit property. Not only that, DW-3 Jitto defendant stated in the witness box that suit property was part of land which was in possession of Ghumar Community which was an admission on fact which is the best evidence.

6. Her version that defence witness 1 had purchased the plot measuring 6 Marlas from Baldev Singh was not believed in absence of legal evidence that property was no longer Awa of the Ghumar Community. The boundaries of the sale deed as claimed by defendants do not tally with the boundaries mentioned in the suit property. There is no mention of any khasra numbers of land allegedly purchased by defendants. Defendants even admitted possession of plaintiffs over the major part of suit property and the

dispute which went to trial was restricted to a small part measuring 0 Kanal 4 Marla of land. For these reasons, the suit was decreed and a mandatory injunction issued to the defendants to remove the encroachments made on the suit property. The District Judge revisited the evidence reappreciated it and came to the same conclusion.

7. The feeble argument based on adverse possession addressed before the learned First Appellate Court failed for the reason that party claiming to hold immovable property adversely must at least go to prove that it was in denial of the owner's title and excluded him from the enjoyment of his property. The defendants failed to prove their right to property either by title or by adverse possession.

8. The learned First Appellate Court rightly did not depend on the sale deeds dated March 26, 1976 Ex.D-1 and October 12, 1979 Ex.D-2. The property in dispute fell in Khasra No.197 (1-4) of Khata No.197/566. The sale deeds produced by the defendants did not mention khasra number and, therefore, it could not be said to have proved on file that the vendor had sold the suit property to defendants vide the two sale deeds. The vendor could not prove that he had share in the suit property and therefore, he could not confer any better title on the defendants than he had.

9. The objection of the defendant is also that suit is not maintainable as the property in dispute belongs to Gram Panchayat and suit is barred under Section 13-B of the Punjab Village Common Lands (Regulation) Act, 1961 was an objection rightly overruled by court. The plaintiffs did not file suit for title but only one for permanent and mandatory injunction to protect property reserved for Ghumar Community and the

plaintiffs were the only Ghumar's in the village and had right to file the present suit. The suit was maintainable. The appeal was dismissed with costs. I have no reason to differ.

10. Before parting, I am constrained to say that on the first date of hearing when the appeal was listed on January 10, 2014 for the first time, a request for adjournment was made on the ground that arguing counsel is not well. The Court adjourned the case to May 13, 2014. Six dates of hearing have passed with requests for adjournment asked for on one pretext or the other till when ultimately on October 04, 2016 the Coordinate Bench of this Court was constrained to pass the following order:-

“Proxy counsel seeks adjournment, submitting that arguing counsel for the appellant is out of station.

The appeal is pending for the last three years nine months and the adjournments have been sought on one ground or the other. On some dates, arguing counsel was not well or was not available or was out of station. Last adjournment was sought for moving application for additional evidence. This shows that the appellant is not interested in pursuing this appeal as the counsel for the appellant is seeking adjournments on one ground or the other.

In the interest of justice, last opportunity is granted.

List for arguments on 05.04.2017.”

11. On the ninth date of hearing i.e. on April 05, 2017 and after the passing of the interim order dated October 04, 2016 this Court summoned LCRs for July 24, 2017. In all probability on a request of counsel searching for a way to seek another adjournment, the Coordinate Bench recorded that since there was no stay in this case the LCR be called for. LCRs have been received and perused by me. The findings of both the Courts are consistent with the material evidence on record on the issues put up for trial.

12. This appeal is found devoid of merit and is hereby dismissed with costs throughout against the appellant and in favour of the plaintiffs.

13. As a result of the dismissal of the appeal, there is no necessity to pass an order on the application for condoning delay of 142 days in re-filing the appeal, which application stands disposed of with the refusal to entertain the main appeal for admission.

(RAJIV NARAIN RAINA)
JUDGE

26.07.2017
manju

Whether speaking/reasoned *Yes*

Whether reportable *No*