

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1977 of 2016 (O&M)
Date of decision: 12.07.2017

Avninder Singh

... Appellant

Vs.

Prem Singh Kalsi

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Hitesh Ghai, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby the suit for possession and mandatory injunction filed by the plaintiff-respondent was decreed.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the pleaded case of plaintiff in his suit for possession and mandatory injunction was that he was Non Resident of India (NRI) and settled in U.K since long time. He was unable to file and pursue the suit personally so, he had appointed Sh. Tara Singh s/o Sh. Bawa Singh as his attorney to file and pursue the suit. He was owner of house/property measuring 150 Sq. Yds. consisting of two rooms, store, varanda, kitchen, toilet, court yard and boundary wall, bearing M.C. No.B-XXXVIII-2432, Gali No.14, Shaheed

Karnail Singh Nagar, Backside Marado Colony, Ludhiana comprised in Khasra No.6086/143, Khewat No.2411, Khatuni No.2306 as per Jamabandi for the year 1994-95 situated within the revenue estate of village Gill-II, H.B. No.263, Teh. & Distt. Ludhiana. He had purchased property in question from Sh. Chanan Singh s/o Sh. Kartar Singh through sale deed dated 23.02.94 and after its purchase, he had raised construction of the abovesaid property. Plaintiff was also shown to be owner in possession in revenue record as well as in Municipal Corporation, Ludhiana. The defendant was well known to plaintiff and he was in need of some residence, so he allowed the defendant to reside in one room of the abovesaid property adjoining the kitchen and in lieu of residence, defendant agreed to look after the said property of the plaintiff. It was agreed that defendant will look after the remaining part of the property as caretaker and not pay rent to plaintiff. In January 2004, plaintiff visited India and left for U.K in April 2004, everything was alright till then. But after April 2004, defendant took undue advantage of absence of plaintiff and with dishonest intention to grab the property in question, broke open the locks of remaining portion of property of plaintiff and illegally took away articles of plaintiff lying in the said rooms. This fact was noticed by the plaintiff in February 2006 when he visited India. He requested the defendant to return the possession of goods back to him, but he failed to do so. Thereafter, plaintiff get served a registered notice dated 11.04.2006 through his counsel Sh. K.L Kochar, Advocate. But despite that, defendant had failed to return the possession back to the plaintiff and also failed to return back the good lying there.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. On completion

of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff are entitled to the relief of possession of property in dispute as prayed for? OPP
2. Whether the plaintiff are entitled to the relief of mandatory injunction as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is not valued for the purpose of court fee and jurisdiction? OPD
5. Whether the plaintiff has not come to the court with clean hands and suppressed material facts from the court? OPD
6. Whether the plaintiff has no locus standi to file the present suit? OPD
7. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing 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, his suit for possession and mandatory injunction, based on title, was decreed by the learned trial Court, vide impugned judgment and decree dated 07.02.2015. Feeling aggrieved, defendant filed his first appeal and took the plea of adverse possession. The first appeal of the defendant came to be dismissed by the learned first appellate Court, vide impugned judgment and decree dated 29.07.2015. Hence this regular second appeal at the hands of defendant.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that late Sh. Chanan Singh son of Sh. Kartar Singh was the true owner of the suit property. It is also a matter of record that plaintiff-respondent purchased the suit property from late Sh. Chanan Singh vide registered sale deed dated 23.02.1994. Defendant-appellant although claimed himself to be the son of late Sh. Chanan Singh, but failed to prove this fact by leading cogent and convincing evidence. It is also not in dispute that the plaintiff was a non-resident Indian. It was the pleaded case of the plaintiff that he put the defendant in possession as a licensee.

This seems to be the reason that after the suit for possession filed by the plaintiff was decreed by the learned trial Court, defendant had a second thought and took the plea of adverse possession before the learned first appellate Court. It goes without saying that plea of adverse possession would always presuppose the ownership of the other side. While taking the plea of adverse possession, appellant has admitted the ownership of the plaintiff-respondent. 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 filing the suit for possession, plaintiff served the defendant with a legal notice dated 11.04.2006 requesting him to hand over the vacant possession of the suit property, but the defendant failed to do so, for the reasons best known to him. Defendant did not reply this legal notice. It was the first opportunity for him to assert his claim either as owner or by way of adverse possession, but he did not do so. Learned counsel for the plaintiff has fairly conceded that the suit filed by the defendant-appellant at a later point of time

qua this very property has been dismissed by the learned trial Court. Under these circumstances, it can be safely concluded that neither the law nor equity was in favour of the defendant-appellant and thus, the impugned judgments and decrees passed by the learned Courts below deserve to be upheld, for this reason also.

Another equally important aspect of the matter is that late Sh. Chanan Singh, after having executed the sale deed dated 23.02.1994 in favour of the plaintiff, remained alive for five and half years, because he died on 24.08.1999. In case, the defendant-appellant was claiming himself to be son of late Sh. Chanan Singh and was claiming his possession over the suit property by way of inheritance, as sought to be argued by learned counsel for the appellant, it does not appeal to reason that he kept silent for a period of more than 22 long years and would not challenge the sale deed suffered by his father.

Despite making his best efforts, learned counsel for the appellant could not improve upon the case of the appellant and rightly so, it being a matter of record, because there was no sufficient and relevant material for improving the case of the appellant. In this view of the matter, no fault can be found with either of the impugned judgments rendered by the learned Courts below and the same deserve to be upheld, for this reason as well.

Before arriving at its judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in paras 15 to 18 of his impugned judgment, which deserve to be noticed here, read as under: -

“Admittedly Chanan Singh, who sold the suit property to plaintiff remained alive for more than five years after the execution of the sale deed as he died on 24.8.1999 but the appellant/ defendant never challenged this sale deed during his life time. Therefore, now defendant/appellant has no locus standi to take up the plea of fraud and misrepresentation in execution of the sale deed by Chanan Singh in favour of plaintiff.

Though the appellant has claimed himself to be owner in possession of the suit property since 1971-72 but the appellant has failed to place on record any document with regard to his ownership over the suit property whereas the respondent/plaintiff has proved on the file copy of the Judgment dated 11.2.2012 passed by the court of Mrs. Monika Chohan, Civil Judge (Jr. Div.) Ludhiana vide which the court has dismissed the suit filed by the present appellant/ defendant Avninder Singh for declaring him to be the owner of one third share in the property in dispute and it has been fairly conceded by the appellant that he has not filed any appeal against the said judgment. Thus meaning thereby the said judgment has attained finality. Thus what to talk of the ownership of the entire property even the appellant/ defendant was not declared owner of one third share in the suit property.

Next contention raised by the learned counsel for the appellant is that no fresh construction was raised by the plaintiff/respondent who alleged that he has constructed the suit property in the year 1994, however the construction over the suit

property is very old and has been constructed about 30 years back, therefore, building expert should have been appointed to determine the age of construction. But again this contention raised by the learned counsel for the appellant does not cut much ice as record reveals that during the trial an application u/o 26 rule 9 CPC was moved by the defendant/appellant Avninder Singh to appoint the Local Commissioner to see the actual and factual position at the spot but the same was dismissed by the court vide order dated 5.9.2014 and it has been fairly conceded by the learned counsel for the appellant that even revision filed against that order was dismissed by the Hon'ble Punjab and Haryana High court. Thus in view of above referred actual and factum position now request of the appellant to appoint building expert to determine the age of construction is without any merit. Even otherwise the factum of raising construction by the plaintiff/respondent after the purchase of plot is corroborated from the documentary evidence produced by him as the sale deed dated 23.2.1994 vide which plaintiff purchased the suit property shows only one room and court yard was existing at the spot whereas now the plaintiff/respondent has filed the present suit for possession of house measuring 150 Sq. yards consisting of two rooms, store, Varandah, Kitchen, toilet, courtyard and boundary wall. Rough site plan attached along with the plaint also depicts the same and thus this fact itself prove that after the purchase of the suit property in the year 1994 construction was raised later on.

Though the learned counsel for the appellant has taken another plea that he has become owner of the property by way of adverse possession but he has failed to substantiate this plea in his evidence. Rather by taking this plea of adverse possession he has admitted title of the plaintiff/respondent. There is no illegality and infirmity in the impugned judgment which require into interference and same stands affirmed. Accordingly findings returned by the learned trial court on all the issues stand affirmed.”

There is no document of title available on record in favour of the defendant-appellant. In the absence of any such documentary evidence in favour of the appellant, he was bound to fail. This seems to be the reason that he had an afterthought and took the plea of adverse possession. It is again a matter of record that separate suit filed by the appellant qua this very property was dismissed by the learned Court of competent jurisdiction vide judgment and decree dated 11.02.2012, but the appellant did not challenge the said judgment passed by the learned trial Court and for no good reasons. In such a situation, plea of adverse possession raised by the appellant would also be of no consequence.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments and decrees rendered by the learned Courts below. He also failed to refer to any question of law, much less substantial question of law involved in the present appeal, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In fact, the impugned

judgments have been found based on sound reasons and the same deserve to be upheld.

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 since no illegality has been found in either of the impugned judgments, the same deserve to be upheld. The present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

12.07.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No