

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2398 of 2016 (O&M)
Date of decision: 28.07.2017

Sarabjit Singh and another

... Appellants

Vs.

Sher Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rahul Makkar, Advocate for
Mr. L.M. Gulati, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the concurrent findings of facts recorded by both the learned Courts below, whereby their suit for possession and permanent injunction was dismissed by the learned trial Court, vide its impugned judgment and decree dated 09.10.2014, which were upheld by the learned first appellate Court, dismissing the first appeal, plaintiffs have approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the plaintiffs purchased the land measuring 0-5 biswas bearing khasra No.285/2/2/1/0-5 of Khewat/Khatauni No.59/1123 to the extent of 2/3rd share and 1/3rd share respectively from its earlier true owner and occupant Ajit Singh son of Gurdit Singh vide registered

sale deed dated 24.07.2003 registered on 30.07.2003. The possession of the land in question was delivered to the plaintiffs by their vendor and mutation No.204 had been sanctioned in the name of the plaintiffs. After purchase of the land in question, the plaintiffs had been in peaceful and continuous possession of the land so purchased by them and defendant No.1 had purchased some land out of khasra No.393/1 (6-11) from Jarnail Singh vide mutation No.828. It was further alleged that land of the plaintiffs was adjoining the land bearing khasra No.393/1 allegedly owned by defendant No.1. It was alleged that in the month of February, 2010, when the plaintiffs were away from their village, defendant No.1 in connivance with defendants No.2 and 3 encroached upon some part of the land of the plaintiffs in khasra No.282/1/2/1 wrongly and illegally and requested the defendants to remove the encroachment made on khasra No.285/2/2/1 belonging to share of the plaintiffs, but the defendants did not pay any heed to request of the plaintiffs. It was alleged that defendants wrongly and illegally encroached upon the land belonging to Lal Singh and Lal Singh made an application to the revenue authorities for the demarcation of his land bearing Khasra No.394/1 in the month of March, 2010 and demarcation of the land of the plaintiffs was conducted by the revenue authorities on 25.04.2011 in the presence of the respectables of the village and it was found that land belonging to the plaintiffs to the extent of 0B-0B 16 biswas had been encroached upon by the defendants wrongly and illegally and it had been amalgamated in khasra No.393/1 and the same was in possession of the defendants. The plaintiffs approached and requested the defendants to hand over the vacant possession of the land in question belonging to the plaintiffs, but the defendants did not pay any heed to request of the plaintiffs.

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

1. Whether the plaintiff is entitled for possession of the suit property as prayed for? OPP.
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.
- 2(a). Whether the demarcation has been done regarding the khasra numbers of the plaintiff according to the High Court Rules and Regulations? OPD.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiff has got no cause of action to file the present suit? OPD.
5. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that plaintiffs have miserably failed to prove their case. Accordingly, suit for possession and permanent injunction filed by the plaintiffs was dismissed by the learned trial Court vide its impugned judgment and decree dated 09.10.2014. Plaintiffs filed their first appeal, which also came to be dismissed by learned first appellate Court, vide impugned judgment and decree dated 13.01.2016. Hence this

regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It goes without saying that appellants, being the plaintiffs, onus was on them to prove their pleaded case. Pleadings alone would not be sufficient to decree the suit of the plaintiffs. However, in the instant case, plaintiffs-appellants failed to prove their case by leading cogent and convincing evidence. Plaintiffs had an opportunity to examine the concerned revenue official, so as to prove relevant entries in the revenue record as well as the demarcation report, but the plaintiffs-appellants failed to do so, for the reasons best known to them. In such a situation, plaintiffs were bound to fail for want of sufficient evidence. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within the jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It is not even the pleaded or argued case on behalf of the appellants that they were not granted sufficient opportunity to put up their case before the learned Courts below. Demarcation report itself would not be sufficient to decree the suit of the plaintiffs, unless the same was proved by the concerned revenue official, who prepared said demarcation report. It is a matter of record that the plaintiffs-appellants did not examine any revenue official, so as to prove the demarcation report in their favour. Bare perusal of both the impugned judgments and decrees passed by the learned Courts below would make it crystal clear that instant one was virtually a case of no evidence. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld,

for this reason also.

It seems that the plaintiffs-appellants had been proceeding on a very casual approach right from day one. Even the sale deed and mutation were not sought to be proved in accordance with law. On the other hand, defendant No.1 has duly proved that he was owner in possession in Khasra No.393/16. Plaintiffs also could not prove the possession of the defendants over the suit land to be illegal. Defendant No.1 duly proved that he was in settled possession in his own right being the owner of said land. In this view of the matter, no fault can be found with either of the impugned judgments and decrees passed 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 brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in late part of para 9 of the impugned judgment, which deserve to be noticed here, read as under: -

“.....And this suit of the plaintiff is dismissed by the ld. trial Court by observing that “As the whole case of the plaintiffs based on the demarcation conducted on 25.04.2011, it was incumbent upon them to prove the demarcation report. The revenue officials have not been examined by the plaintiffs and neither the defendants have got any opportunity to cross-examine them. As such, at this stage, it cannot be said through the evidence brought on record that the plaintiffs are entitled to the relief as claimed for.”

Now the present appeal is filed by the plaintiff by arguing that the impugned order is patently illegal, null and void, beyond the scope of the facts of the case and is against the principles of law and therefore, the same is liable to be set aside. Ld. trial Court has not appreciated the demarcation report dated 25.04.2011, which has clearly indicated that 0 bigha 0 biswas 16 biswasia land has in illegal and authorised possession of the respondents/defendants.

So accordingly, as the plaintiff filed this suit by stating that defendants are in illegal and unauthorized possession of the property in question, so it is for the plaintiff to prove that the defendants are in unauthorized and are in illegal possession. But the plaintiff failed to prove this fact on the file because no revenue official has been examined by the plaintiff to prove the demarcation report dated 25.04.2011 vide which revenue official observed that 15 bighas of land is encroached by the defendants and the same is amalgamated in their land. As the revenue officials who conducted the demarcation has not stepped into the witness box so accordingly, trial court rightly held that, defendants has not got any opportunity to cross examine the revenue officials. So the only fact which is required to be proved by plaintiff i.e., demarcation, unauthorized possession of defendants, is not proved on the file.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the concurrent findings

recorded by both the learned Courts below. He also could not refer to any question of law, much less substantial question of law, 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 this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 and decrees passed by the learned Courts below, 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

28.07.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No