

RSA No. 3529 of 2016 (O&M)

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

RSA No. 3529 of 2016 (O&M)

Date of Decision: 17.8.2017

Satbir (since deceased) through LR's and others

.....Appellants

Vs.

Anil Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Surinder Singh Siao, Advocate
for the appellants.

Mr. Sandeep Kotla, Advocate
for the caveator-respondent.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the concurrent findings of facts, recorded by both the learned courts below, whereby suit for separate possession and permanent injunction filed by the plaintiff-respondent, on the basis of title drawn by him on the strength of a registered sale deed, was decreed by the learned trial court vide its impugned judgment and decree dated 12.2.2015 and the said judgment of learned trial court was upheld by the learned first appellate court, vide its impugned judgment and decree dated 9.5.2016, defendant-appellant has approached this Court by way of instant regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para 2 and 3 of the impugned judgment, are that respondent-plaintiff

RSA No. 3529 of 2016 (O&M)

Anil Kumar pursued the instant suit for possession as well as permanent injunction under the provisions of the Specific Relief Act 1963 read with the Code of Civil Procedure 1908 to the effect of mandating the contesting appellants-defendants, Sh. Satbir and others to remove their unauthorized encroachment/construction/installation from the portion suit property/plot bearing No.181/1 measuring 101 Square Yards as per field book and khatoni, marked by letters “ABEF” and delineated in red colour as per the respondent-plaintiff’s site plan; situated within the “abadi deh” of the village Beri Panna Chulyan, Tehsil Beri, District Jhajjar, Haryana, as mentioned, detailed and described in the plaint and to hand over its vacant possession to the plaintiff alongwith the consequential relief qua the decree of permanent injunction thereby restraining the appellants-defendants from interfering in any manner over the suit property, as prayed for.

Succinctly, the case of the respondent-plaintiff was that the respondent-plaintiff was absolute owner entitled to possession of the suit land which was acquired in consequence of the order of the court passed in the civil suit titled as “Hukam and others Vs. Jugal and others” and its consequential execution, accordingly was absolute owner in possession of the suit property, but taking undue advantage of the existing state of affairs, the appellants-defendants mischievously and in clandestine manner dispossessed the respondent-plaintiff by raising their unauthorized encroachment, constructions, installation, without any right, title or interest. Consequently the respondent-plaintiff requested to the appellants-defendants on several occasions to vacate the encroached suit property and handed over its actual, specific and peaceful vacant possession along with desisting from interference, but of no avail.

RSA No. 3529 of 2016 (O&M)

3

Having been put to notice, defendants appeared and filed their 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 for a decree of possession, as prayed for? OPP

2 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. Sufficient and cogent evidence was brought on record by the plaintiff, so as to prove his title. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has duly proved his case. Accordingly, his suit for possession and permanent injunction was decreed by the learned trial court, vide its impugned judgment and decree dated 12.2.2015. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 9.5.2016. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the appellants.

It is a matter of record that plaintiff was not the original proprietor of the village of defendants-appellants. Suit property was purchased by father of the plaintiff in the year 1995. Vendor of the father of plaintiff was admittedly a co-sharer in Pana Chuliyan. It has also come on record that after selling suit property, vendor of the father of plaintiff-respondent put father of plaintiff in actual physical possession over the suit

RSA No. 3529 of 2016 (O&M)

property, vide rapat dated 18.3.2005 (Ex.D1). This report dated 18.3.2005 (Ex.D1) regarding handing over possession, also bears signature of the plaintiff. It goes without saying that possession goes with the title unless it is proved to the contrary.

It is also a matter of record that suit property was part of khasra No. 181/1, which was un-partitioned and joint property. Suit land was measuring 101 sq. yards. Earlier, it was in the possession of Sh. Jamna Dutt who was admittedly a member of proprietary body of the village. It was this Jamna Dutt who put father of the plaintiff in possession by way of abovesaid rapat dated 18.3.2005, which also bears signatures of the plaintiff. Having said that, this Court feels no hesitation to conclude that the plaintiff has duly proved himself to be owner in possession of the suit property. Thus, his suit was rightly decreed by both the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason also.

Keeping in view the fact situation, referred to hereinabove, suit of the plaintiff was maintainable in the present form. After having become co-sharer in the proprietary body, plaintiff would always be at liberty to seek his separate possession and also a consequential relief of permanent injunction. That is what he rightly did in the present case. It is also not in dispute that defendants-appellants neither challenged the validity of sale deed in favour of the plaintiff at any point of time, nor they filed any counter-claim in the suit filed by the plaintiff.

Further, when the issues were being framed by the learned trial court, defendants-appellants never sought framing of any other additional issue. Even after purchase by father of the plaintiff, defendants-appellants never filed any suit for partition. Under these undisputed facts and

RSA No. 3529 of 2016 (O&M)

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 as well.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent and relevant findings recorded by the learned first appellate court in later part of para 12 and para 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“.....The respondent-plaintiff while deposing has admitted that in the year 1971-73, the respondent-plaintiff was not the co-sharer in Pana Chuliyan. However, the suit property was purchased by the father of the respondent-plaintiff in the year 1995. He also has deposed that the vendor is the co-sharer in Pana Chuliyan. Witness also deposed that proceedings of delivery of possession of the suit property vide report dated 18.3.2005 Ex.D1 record the name of the father of the respondent-plaintiff and that he died in the year 1998. Respondent-plaintiff has specifically deposed that on the presence note of said report, there exists the signatures of respondent-plaintiff. It has been argued that till the time of report of L.C dated 18.3.2005, the name of Jamna Dutt only was continuing in revenue record and the report was prepared in accordance with the revenue record, thereby falsifying the plea of alleged manipulation on the part of the respondent-plaintiff. Now if the testimony of the appellants-defendants is perused, DW1 has pleaded ignorance as far as the ownership with respect to the suit property is concerned. However, he

has admitted that the number of the suit property is 181/1 measuring 101 square yards thereby corroborating the site plan Ex.P1. The witness has also admitted that the alleged shops are not recorded in Municipal Committee, Beri nor any house tax has ever been paid for the said shops. This deposition is opined to be sufficient to hold that appellants-defendants failed to produce any evidence to prove the alleged existence of their shops on the suit property. The witness has further admitted that the decision of the Civil Court titled as Hukmi etc. Vs. Juglal etc. has never been challenged by the appellants-defendants nor any litigation has ever been filed against the respondent-plaintiff by the appellants-defendants. DW2 has also deposed about no knowledge qua the ownership and possession of the suit property with the appellants-defendants.

Ex.P5 is the judgment of said suit titled as Hukmi etc. Vs. Jug Lal etc. thereby announcing a final decree of partition of the property including the suit property of the present suit. The appellants-defendants have placed on record the proceedings of execution of the decree in case titled as Hukmi etc. Vs. Jug Lal etc. about delivery of possession of the property, which was the subject matter of the said suit. The said document Ex.D1 perusal thereof shows that the land bearing No.182/1 measuring 101 square yards came into possession of Jamna Dutt and the proceedings of presence are signed by Anil Kumar (respondent-plaintiff)..”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by 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 a regular second appeal at the hands of this

RSA No. 3529 of 2016 (O&M)

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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

17.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No