

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

**RSA No.2997 of 2015 (O&M)
Date of decision: 10.08.2017**

Jagat Singh and others

... Appellants

Vs.

Anil Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Adarsh Jain, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant regular second appeal, at the hands of plaintiffs, is directed against the impugned judgment of reversal dated 13.02.2015 passed by the learned first appellate Court, whereby first appeal of the defendants was allowed and suit for permanent injunction filed by the plaintiffs was dismissed, setting aside the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that claiming themselves to be joint owners in possession of the disputed plot as detailed and described in para No.1 of the plaint and as depicted with letters A B C D E F in the site plan annexed with the plaint, plaintiffs Jagat Singh and others had instituted a suit for permanent injunction against defendants Anil Kumar etc. alleging therein that

as the defendants having no right, title or interest in the disputed plot, had been threatening to dispossess the plaintiffs from the same and as all the requests made to the defendants in this regard fell on the deaf ears of the defendants, so, this necessitated the institution of the present suit.

Upon notice, defendants appeared and filed their 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 plaintiffs are entitled to a decree for permanent injunction restraining the defendants from interfering the peaceful possession of the plaintiffs? OPP.
2. Whether the plaintiffs are entitled for restraining the defendants from dispossessing the plaintiffs from the suit property as detailed in para No.1? OPP.
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the plaintiffs have not come with clean hands and have suppressed the material facts from the court? OPD.
5. Whether the suit is false, frivolous and vexatious as the plaintiffs have no right, title or concern with the land? OPD.
6. Whether the plaintiffs have no locus standi or no cause of action to file the present suit? OPD.
7. Relief.

Both the parties brought on record their documentary as well as oral evidence, so as to prove their respective pleaded cases. After going through the evidence brought on record and hearing learned counsel for the parties, the

learned trial Court came to the conclusion that plaintiffs have proved their suit for permanent injunction. Accordingly, their suit for permanent injunction was decreed by the learned trial Court vide its judgment and decree dated 17.05.2013. Feeling aggrieved, defendants filed their first appeal, which was allowed by the learned first appellate Court vide its impugned judgment and decree dated 13.02.2015. Hence this regular second appeal at the hands of plaintiffs.

Heard learned counsel for the appellants.

It has come on record, as discussed by the learned first appellate Court in para 10 of the impugned judgment, at page 30 of the paper book, that neither PW1 Satya Parkash Mittal Draftsman, nor PW2 Jagat Singh-plaintiff No.1 came present before the learned trial Court for their cross-examination. When learned counsel for the appellants was asked to give reasonable explanation in this regard, as to why plaintiff as well as his witness did not come forward for the purpose of their cross-examination, he had no answer and rightly so, it being a matter of record.

On the other hand, defendants examined DW1 Parkash Chand and DW2 Anil Kumar, who successfully stood the acid test of cross-examination. Both these witnesses were put to lengthy cross-examination but the plaintiffs could not elicit anything adverse from both these witnesses. It has also come on record that there was a temple and park in the disputed land and the said park was in existence, when Lala Ram, predecessor-in-interest of the plaintiffs-appellants alienated the land, including the disputed land by way of various sale deeds, having a specific reference regarding existence of park, in the said land. Under these circumstances, which were based on record, it can be safely

concluded that the learned first appellate Court was well justified in passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

Appellants, being the plaintiffs, onus was on them to prove their pleaded case, by leading cogent and convincing evidence. Their pleadings alone would not be sufficient to decree their suit. Plaintiffs also cannot succeed on the alleged weakness of the case of the defendants. So far as the case in hand is concerned, plaintiffs-appellants have miserably failed to prove their case. Non-appearance of one of the plaintiffs as PW2 as well as their Draftsman as PW1 for the purpose of cross-examination would also show that they were not proceeding on a bonafide approach. In this view of the matter, plaintiffs were bound to fail. That is what has been held by the learned first appellate Court, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***T.K. Mohammed Abubucker (D) through LRs and others Vs. P.S.M. Ahamed Abdul Khader and others, 2009 (14) SCC 224 (SC).***
2. ***V. Srinivasaraju Vs. M/s Bharat Electronics Ltd. and others, 2009 (17) SCC 135 (SC).***
3. ***Sebastiao Luis Fernandes (Dead) through LRs and others Vs. K.V.P. Shastri (Dead) through LRs and others, 2013 (15) SCC 161 (SC).***
4. ***Partap Singh (Died) through LRs Vs. Chand Hoon, 1993 (3)***

RCR (Civil) 611 (P&H)

5. *Smt. Ramesh Vs. Sheo Narayan and another, 2011 (52) RCR (Civil) 801 (P&H).*
6. *Joginder Kaur Vs. Gurmej Singh, 2013 (1) RCR (Civil) 583 (P&H).*
7. *Des Raj and others Vs. Kartar Chand and others, 2014 (3) RCR (Civil) 980 (P&H)*
8. *Suraj Mal and another Vs. Rajender and another, 2014 (34) RCR (Civil) 909 (P&H)*

Before arriving at his judicious conclusion, the learned District Judge 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 first appellate Court in paras 10 to 12 of the impugned judgment, which deserve to be noticed here, read as under: -

“In the entire plaint though the plaintiffs have claimed themselves to be joint owners in possession of the disputed plot but they have not at all mentioned that the same is a park. It is also pertinent to mention that site plan Ex.P1 of the disputed property as has been placed by the plaintiffs on the file cannot be attached any legal credence because PW1 Satya Parkash Mittal, Draftsman, who had prepared the same, after recording his examination-in-chief never turned for the purpose of cross-examination and thus, no legal credence can be attached to his statement. Same is fate to the statement of PW2 Jagat Singh (plaintiff no.1) who too also did not turn up to face the cross-examination. The testimony of PW3

Jalaluddin, Patwari is regarding the fact that being local commission appointed by the court, he had prepared the report Ex.PW3/A and the reference of the same had already been given. Further, during his cross-examination, he has specifically deposed that in the disputed plot, a temple as well as a park is in existence. Though plaintiff No.3 Hari Lal in his testimony as PW4 has tried to substantiate the averments taken in the plaint but in his duly sworn affidavit Ex.PW4/A, he has also deposed that whatsoever construction is in existence at the spot, the same belongs to the plaintiffs and the tree etc. have been planted by them and the disputed plot was also being used by them for paying obeisance. However, no credence can be attached to his statement because no such plea regarding raising of construction and using the disputed plot for paying obeisance and planting the trees etc. has been taken in the plaint. Thus, except the bald and self serving statement of one of the plaintiffs Hari Lal, there is absolutely nothing on the file to substantiate the stand taken by the respondents-plaintiffs in the plaint.

Though, as per the contents of jamabandi Ex.PW3/B, the plaintiffs have been shown to be co-sharers in the land bearing killa No.14/11 and 14/24 but the presumption of truth attached to the contents of the jamabandi has been duly rebutted by the defendants by way of examining DW1 Parkash Chand, an inhabitant of the area and one of the defendants Anil Kumar as DW2 and in spite of thorough and searching cross-examination

conducted on both these witnesses, nothing has appeared in their statements to disbelieve the same and both of them in their statements have categorically deposed that there is temple and park in the disputed land and the said park was in existence when Lala Ram, predecessor-in-interest of the plaintiffs had alienated the land including the disputed land and in the various sale deeds, a specific reference regarding existence of park in the said plot has been mentioned. Accordingly, the plaintiffs have miserably failed to prove their possession over the disputed land and accordingly, it is held that the disputed plot is a park which is being used by the inhabitants of the area where the defendants are also residing after purchase of the plots from the predecessor-in-interest of the plaintiffs.

Since the plaintiffs are not to be proved in possession of the disputed plot, so, they are not entitled to the relief of permanent injunction as prayed for by them and accordingly the findings of the learned trial court pertaining to issues no.1 and 2 are hereby reversed. As the possession of the plaintiffs over the disputed property is not at all established, so, they have no cause of action and locus standi to institute the present suit and findings under issues no.5 and 6 are also hereby reversed. In view of the aforesaid findings, under issue no.4 it is held that the plaintiffs have not approached the court with clean hands and findings under this issue are hereby returned in favour of the defendants and against the plaintiffs. Since nothing has been submitted before this court

regarding findings under issue no.3, so, the same are hereby affirmed.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate Court. He also failed to 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 present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

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

[RAMESHWAR SINGH MALIK]
JUDGE

10.08.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No