

RSA No. 3915 of 2015 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3915 of 2015 (O&M)

DATE OF DECISION:17.02.2017

Surinder Singh

.....Appellant

Versus

Shingara Singh and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. PS Jammu, Advocate
for the appellant.

DAYA CHAUDHARY, J.

C.M. No. 9591-C of 2015

There is delay of 27 days in refiling the accompanying appeal.

For the reasons mentioned in the application, the same is allowed and delay of 27 days in refiling the accompanying appeal is hereby condoned.

RSA No. 3915 of 2015

The present appeal has been filed to challenge judgment and decree dated 26.2.2014 passed by Additional Civil Judge (Senior Division), Ferozepur as well as judgment and decree dated 14.5.2015 passed by Additional District Judge, Ferozepur.

Briefly, the facts of the case as made out in the present appeal are that respondent No.1-plaintiff filed a suit for permanent injunction

restraining the appellant-defendant No.1 from interfering with the peaceful possession over the suit land measuring 10 kanals 4 marlas comprised of Rect. No. 65, Killa No. 25/1 (4-16), Rect. No. 86, Killa No. 5/1 (5-8), Khewat No. 2582, situated at Khoo Marhian Wala, Ferozepur City on the ground that he was in possession of the suit land as a tenant for the last more than 15 years under the proforma respondent. He was paying rent to respondent No.2 regularly and the name of respondent No.1-plaintiff was duly recorded in the revenue record and appellant-defendant No.1 was having no concern with the same.

The suit was contested by appellant-defendant No.1 and written statement was also filed by raising an objection that plaintiff-respondent No.1 has not come to the Court with clean hands and has concealed some material facts from the Court. Appellant-defendant No.1 filed an application for correction of khasra girdawari of the suit property before Assistant Collector IInd Grade, Ferozepur, which was decided in favour of the appellant-defendant No.1 and against respondent No.1-plaintiff. It was also pleaded in the written statement that earlier Kundan Singh, who is brother-in-law of appellant-defendant No.1, was in possession of the suit land and thereafter appellant-defendant No.1 came in possession of the same. Respondent No.1-plaintiff never came into possession of the suit land and obtained ex parte stay order and also filed an application for correction of khasra girdawari.

Learned counsel for the appellant submits that both the Courts below have not taken into consideration the application for correction of khasra girdawari, which was allowed by Assistant Collector after spot inspection. Even the appeal filed by respondent No.1-plaintiff was

dismissed in default and the Commissioner remanded the case to the Collector. Learned counsel further submits that both the Courts have not taken into consideration the oral and documentary evidence and decided the case against the appellant.

Heard the arguments advanced by learned counsel for the appellant and have also gone through the documents available on the file.

Admittedly, respondent No.1-plaintiff-Shingara Singh filed a suit for permanent injunction restraining appellant-defendant No.1 from interfering with the peaceful possession of the land in dispute. Notice in the suit was issued and it was contested by appellant-defendant No.1. The suit qua defendant No.2 was dismissed as withdrawn and following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP.
2. Whether the plaintiff has not come to the Court with clean hands? OPD
3. Whether the suit of the plaintiff is false, frivolous and vexatious? OPD
4. Relief.

The trial Court while allowing the suit of respondent No.1-plaintiff has recorded the following findings:-

“I have heard the contentions of learned counsel for both the parties and gone through the case file with their able assistance. I am convinced with the submissions of learned counsel for the plaintiff. The case of the plaintiff is based upon revenue record which is certainly in favour of the plaintiff. Presumption of

truth is attached with the jamabandi until contrary is proved. The defendant has miserably failed to rebut this contention by leading any evidence on the file. It is the case of the defendant that earlier Kundan Singh was in possession of the suit site from whom defendant No.1 taken the possession. In this regard no evidence is on the record showing the possession of Kundan Singh which was lateron delivered to defendant as alleged. Nothing is on the record to show the connectivity of handing over the possession by Kundan Singh to defendant No.1. Even the capacity of Kundan Singh for possession of the suit site is not proved, therefore, he could not transfer better title than he himself had. Had there been any delivery of possession by Kundan Singh to defendant then there must have any Rapat recorded with Halqa Patwari. This evidence is also missing on the record. Had there been any writing between Kundan Singh and defendant then the same must be incorporated in revenue record but there is no such evidence on the file. Admittedly, the defendant never taken the possession from the plaintiff and admittedly plaintiff never handed over the possession to the defendant. The revenue record is in favour of the plaintiff which proves the possession of the plaintiff over suit site. The receipts showing the payment of rent by the plaintiff being tenant to Dharamshala Dharm Arth is also a supportive evidence in favour of the plaintiff. Mere filing an application for correction of khasra girdawari and obtaining the order from Assistant Collector IInd Grade that possession is of the

defendant over suit site is not suffice as the same is still subjudiced and the appeal is pending against that order. Convincing with the submission of learned counsel for the plaintiff it is opined that there is ample evidence on the file showing the plaintiff in cultivating possession of the suit property and defendant has miserably failed to prove his possession. Accordingly, issue No.1 is decided in favour of the plaintiff and against the defendant.”

Aggrieved by the aforesaid judgment of the trial Court, appellant-defendant No.1 filed an appeal before learned Additional District Judge, Ferozepur, which was also dismissed. The findings recorded by the appellate Court are reproduced as under:-

“To that possession the plea of the defendant No.1 is that he came in possession over the suit land from one Kundan Singh son of Bhagwan Singh son of Guljari Mal who is brother-in-law of defendant No.1. The defendant No.1 has failed to establish that how that Kundan Singh was in possession over the suit land. Second to that the plea of defendant No.1 is that he is in possession over the suit land for the last 25 years. If the defendant No.1 is in possession over the suit land for the last 25 years, then it is highly suspicious that why he has not got corrected that revenue record in his favour since then and he has also failed to produce on record any such rent receipt qua that pleas either in his favour or in favour of that Kundan Singh.

By the observations as referred above and that

applying the principles of preponderance of probability, it reflects that the plaintiff is at the better footing than that of defendant No.1 to establish his possession over the suit land. In such a manner, the citation as relied by learned counsel for appellant/defendant No.1 is not supporting his contention, rather it has been found that no proper procedure has been applied to change that khasra girdawari at the name of appellant/defendant No.1. To that wrong way to change that khasra girdawari in that manner, the citation of **Bachan Singh's case (supra)** is supporting the contention of plaintiff. Therefore, the learned trial Court has rightly granted the relief of permanent injunction in favour of plaintiff while deciding all that issues in question in his favour. Accordingly, the findings of learned trial Court qua that all the issues are hereby affirmed.”

From the perusal of findings recorded by both the Courts below, it is clear that appellant-defendant No.1 could not establish as to how Kundan Singh was in possession over the suit land. In case, he was in possession over the suit land for the last 25 years then the question of correction in the revenue documents does not arise at all. Appellant-defendant No.1 could not place on record any rent receipt either in his favour or in favour of said Kundan Singh. As per case of plaintiff-respondent No.1, the revenue record was in his favour and appellant-defendant No.1 could not rebut the same by leading any evidence contrary to that. As per case of appellant-defendant No.1, earlier Kundan Singh was in possession of the suit land and thereafter possession was taken from him.

There is nothing on record to show that possession was with Kundan Singh and the same was later on handed over to appellant-defendant No.1. When said Kundan Singh was not having any right over the property in dispute, therefore, he could not transfer better title than he himself had. No rapat was recorded with Halqa Patwari regarding transfer of possession. Neither there is any entry in the revenue record nor there is any evidence on the file. It could not be proved on record that appellant-defendant No.1 took possession from plaintiff-respondent No.1 or from said Kundan Singh and is claiming his right only on the basis of moving of an application for correction of Khasra Girdawari. Both the courts below have recorded concurrent findings against the appellant-defendant No.1 and as such he has failed to prove his right over the property in dispute.

The judgments and decrees passed by both the Courts below do not require any interference and as such the present appeal filed by appellant-defendant No.1 being devoid of any merit is hereby dismissed.

February 17, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes