

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.5691 of 2016

Date of decision:3.8.2017

Karam Chand and others

...Appellants

Versus

Subhash Chand and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.M.S.Chahal, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Defendants are in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for permanent injunction filed by the plaintiffs-respondents was decreed by the learned trial court, vide its impugned judgment and decree dated 17.7.2015 and first appeal of the defendants was also dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 6.4.2016, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that Sheo Lal alias Sheo Dayal, Ram Nath and Jas Ram Were the owners in possession of a Gitwar comprised in khewat No. 254 Khatauni No. 517 Khasra No. 8240 measuring 450 sq. yards situated within the revenue estate of village Kharawar, Tehsil Sampla District Rohtak and as detailed in paragraph No. 1 of the plaint.

The respondents -plaintiffs were related to the Sheo Nath etc. as shown in para No. 2 of the plaint. The suit property was being used by the respondents-plaintiffs as the owners. However, on 25.9.2011, the appellants defendants brought the building material near the suit property with an intention to encroach the same. The suit property was open plot and only two bitodas and tow kudies of the respondent-plaintiffs were lying on it. Despite repeated requests, when the appellants-defendants did not desist from their illegal act, the respondents-plaintiffs were constrained to file this suit seeking a decree for permanent injunction restraining the appellants-defendants from interfering in the ownership and possession of the respondents-plaintiffs over the suit property.

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 decree of permanent injunction as prayed for? OPP
2. whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus-standi to file the present suit? OPD
4. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiffs have duly proved their case, by leading cogent and convincing evidence.

Accordingly, their suit for permanent injunction was decreed, by the

learned trial court, vide its impugned judgment and decree dated 17.7.2015. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 6.4.2016. Hence this regular second appeal, at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below, would make it crystal clear that the plaintiffs have duly proved their pleaded case, by leading cogent and convincing evidence. They established their long, settled and peaceful possession over the suit property. When the defendants-appellants tried to dispossess the plaintiffs without resorting to due process of law, plaintiffs were left with no other option except to approach the learned trial court by filing the suit for permanent injunction, restraining the defendants from dispossessing the plaintiffs-respondents except in due course of law.

Further, once the predecessor-in-interest of the plaintiffs-respondents have been found in possession of the suit property, presumption regarding continuity of possession would be in favour of the plaintiffs-respondents under Section 109 of the Indian Evidence Act. Further, since the defendants could not prove either their absolute ownership or their exclusive possession of the suit land, they had no right to dispossess the plaintiffs forcibly and except in due course of law. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

In fact, by proving the local commissioner report on the record, plaintiffs discharged their initial onus. They brought on record the relevant revenue record right from the year 1879 so as to prove their ownership as well as possession. Thereafter, if the defendants-appellants were disputing the claim of plaintiffs, onus would be shifted on the defendants to prove on record their better and contrary evidence so as to disprove the case of the plaintiffs. However, in the present case, the defendants-appellants failed to discharge their onus, by bringing on record any such cogent evidence. Under these undisputed facts and circumstances of the case, it can be safely concluded that both 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.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 21 and 22 of its impugned judgment, which deserve to be noticed here, read as under:-

“It is well settled principle of civil jurisprudence that the civil suits are decided on pre-ponderance of the evidence. The degree of proof in civil suit is different from the degree of proof in the criminal cases where the cases have to be proved beyond shadow of reasonable doubt. In this case, since the respondents-plaintiffs have relied on the revenue record pertaining to the year 1879 coupled with the local commissioner's report they have initially discharged their burden to prove their ownership as well as their possession.

*Now, the onus has been shifted upon the appellants-defendants to show that the suit property is part of khasra No.8237 by leading clear and cogent evidence but no evidence has been led by them. Hence, in sense it can be said that the respondents-plaintiffs have failed to prove the identity of the suit property and there is no possession of the respondents-plaintiffs over the suit property. There is presumption regarding continuity of the possession under Section 109 of the Indian Evidence Act. Once, in revenue record, the predecessor in interest of the respondents-plaintiffs have been found in possession over the suit property then it shall be presumed that they are in possession over the same. No doubt, putting the bitora and kurdies on a piece of land are the acts of user but in this case, the intention of the respondents-plaintiffs was to keep the other persons away from using the land owned by them. Generally, the possession of the vacant plot goes with the owners and in this sense, the respondents-plaintiffs shall be considered to be the owners in possession of the suit property. The learned counsel for the appellants-defendants has relied upon the case titled **Bhan Singh Versus Tej Singh (supra)**. However, the aforesaid authority is of no help to the appellants-defendants for a simple reason that it is the consistent case of both the parties that on the suit property, there exists bitoras and kurdies etc. In the aforesaid authority, the plaintiff has started raising construction by making foundation in the suit property to establish their possession which are not the facts of the instant case. Moreover, in this case the respondents-plaintiffs have placed on file the revenue record showing their ownership over the suit property. So, the aforesaid authority is of no help to the appellants-defendants.*

*The learned counsel for the appellants-defendants has relied upon the case titled **Hari Ram Versus Bharat Singh's***

case (supra) in which it has been held that the revenue entries of 100 years old jamabandi produced showing the possession of his fore father in the column showing the land as Shamlat Deh and in the absence of evidence of the present state of affairs, only oral statements of both the parties in favour of their possession is not sufficient. PW2 Darya and PW3 Hari Ram and defendant witnesses have deposed about the possession of the appellants-defendants. However, in the instant case, the old revenue record could not be updated as the suit property has become the part of abadi deh. In abadi deh a person in possession shall be deemed to be the owner of that piece of land. In this case, efforts have been made by the respondents-plaintiffs to place on record the existing position of the spot by examining the local commissioner who has demarcated the suit property. No objection has been moved by the appellants to dispute the correctness of the report of the local commissioner. Moreover, no evidence in contrary has been placed on record to dispute the report of the local commissioner. The appellants-defendants have asserted the suit property to be the part of khasra No.8237 but no evidence to corroborate their version has been placed on record. So, the aforesaid authority is quite distinguishable from the facts of the instant case.”

During the course of arguments, learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

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

3.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No