

RSA No. 4507 of 2015(O&M)

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

RSA No. 4507 of 2015 (O&M)

Date of Decision: 28.8.2017

Sheo Chand and others

.....Appellants

Vs.

Rakesh Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. B.S. Rathee, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendants are in regular second appeal against the impugned judgment of reversal passed by the learned District Judge, whereby first appeal of the plaintiff was allowed and his suit for permanent injunction was decreed.

Brief facts of the case, as recorded by the learned first appellate court in para No.2 of its impugned judgment, are that plaintiff by way of suit sought decree of permanent injunction against the defendants on the averments that the land bounded as on the eastern side: gali and in front of which house of Sheo Chand; on the western side: house of Ram Kumar; on the northern side: house of Balbir Singh and on the southern side: rasta, total land measuring 39 square yards which was shown by letters ABCD in red colour in the site plan situated within the revenue estate of village Kothal Kalan, Tehsil and District Mohindergarh was purchased by plaintiff from its

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original owner Ramanand son of Suraj Bhan son of Chuna Ram, resident of village Kothal Kalan, Tehsil and District Mohindergarh vide agreement to sell dated 15.01.2005 and the whole sale consideration was paid by the plaintiff to Ramanand. It was decided that the plaintiff shall be at liberty to register sale deed in favour of any one. After the purchase of suit land, the plaintiff raised the construction of tin shed on his own expenses and then some part was left vacant for using the same as chowk and since the day of purchase, the plaintiff had been coming as owner in possession of the suit land. But the defendants, who were strong persons, started interfering in the peaceful possession and user of the suit land and were bent upon to oust the plaintiff from the suit property forcibly whereas the defendants have no right to do so. The plaintiff requested the defendants several times not to interfere in the peaceful possession of the plaintiff but to no effect. Hence the plaintiff filed the suit seeking decree of injunction against the defendants from interfering in the possession and user of the plaintiff over the suit property and from ousting the plaintiff from the suit property forcibly and illegally.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. In addition to their written statement, defendants also filed their counter-claim. Plaintiff filed replication to written statement and also filed his reply to the counter claim of the defendants. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether plaintiff is owner in possession over suit property vide agreement dated 15.01.2005? OPP
2. If issue No.1 is proved, whether plaintiff is entitled for relief of permanent injunction? OPP
3. Whether defendants are entitled for the relief of

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permanent injunction as claimed in counter claim? OPD

4. Whether suit of the plaintiff is not maintainable? OPD

5. Whether suit of the plaintiff is time barred? OPD

6. Whether plaintiff has no locus standi to file the present suit? OPD

7. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. 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 as well as defendants failed to prove their respective cases set up before it. Thus, suit of the plaintiff for permanent injunction as well as counter-claim of the defendants were dismissed by the learned trial court, vide its common impugned judgment and decree dated 22.10.2014.

Defendants did not file any appeal against dismissal of their counter-claim by the learned trial court. However, plaintiff felt aggrieved and when he filed his first appeal, defendants also filed their cross-objections. Cross-objections of the defendants were dismissed and first appeal of the plaintiff came to be allowed by the learned District Judge, vide his common impugned judgment and decree dated 16.4.20015. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

Ownership as well as possession of the plaintiff over the suit property has gone completely uncontroverted at the hands of the defendants-appellants. There was a serious dispute between the parties about the existence and availability of 5 feet passage on the Western side of the plot of defendant No.1-Sheo Chand. With a view to ascertain true fact situation

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obtaining at the site, a Local Commissioner was appointed. As per the report of Local Commissioner, passage of 5 feet was found situated on the Western side of the plot of defendant No.1-appellant.

None of the parties was claiming the land under this passage of 5 feet to be their ownership. Pleading and argued case on behalf of the plaintiff was that defendants have encroached upon this 5feet passage, for which they have no right and they should be enjoined from doing so. Admittedly, defendants did not file any objection to the report of Local Commissioner. Having said that, this Court feels no hesitation to conclude that the learned District Judge was well within his jurisdiction to pass the impugned judgment of reversal and the same deserves to be upheld.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 22 to 24 of its impugned judgment, which deserve to be noticed here, read as under:-

The defendants vide counter claim have claimed themselves to be owners in possession of the land measuring 25 feet x 35 feet regarding which they entered into agreement to sell with the vendor on 19.11.1989 shown by letters ABCDEF in the site plan and has sought injunction that plaintiff be restrained from taking possession of the property in question and it is the plea of the defendant that he left 5 feet gali from their plot measuring 25 feet x 35 feet as the plots of his family members were situated on the back side of his property, so, for ingress and egress to the property of all the family members he left 5 feet gali but this Court does not find any force in this contention as in this case the local commissioner was sent by

the court which is evident from the information letter Ex.P7 which was given to the parties by Shiv Lal Field Kanungo, Mohindergarh on 10.12.2012 and in presence of the parties the site was inspected and both the plots were demarcated and demarcation report is Ex.P9 and presence of parties recorded in Ex.P8 shows that the plot was inspected in presence of both plaintiff and defendants and in the report of local commissioner Ex.P9 it has appeared that on the eastern side of the property in dispute there was rasta and one rasta was there on southern side and this rasta on eastern side as well as southern side is as per site plan of Bandobast 1932 and from the report Ex.P9 and site plan Ex.P10 prepared by local commissioner it is evident that plaintiff had raised construction on an area measuring 39 square feet and defendant Sheo Chand has raised construction on area measuring 20 feet 6 inch on southern side, 27 feet on northern side, 37 feet on western side and around 41 feet in eastern side and his brother Shri Ram son of Nanar had raised construction on 9 feet 16 inch from southern side, 15 feet on northern side and 41 feet on western side and if area of southern side of Sheo Chand and Shri Ram is joined then it comes out to be 30 feet and length from southern north comes out to 37 feet and defendant No.1 Sheo Chand when appeared in the witness box as DW3 has admitted that his plot was his ancestral property and it appears that the property which Sheo Chand has bought vide agreement dated 19.11.1989 includes the property of his brother and of himself shown in green colour in the site plan prepared by the local commissioner. Otherwise the dimensions of plot of defendants on southern side comes out to 20 feet 6 inch whereas it should have been 25 feet and it appears that the defendant No.1 Sheo Chand has included the gali in his plot and has closed the same. The version of defendant Sheo Chand that gali was not closed by him rather it was closed by plaintiff Rakesh Kumar is not believable as DW2 Sumer Singh the witness of defendants has

stated that in between plot of plaintiff and defendants there was 5 feet gali and Sheo Chand had already included that gali in his plot and he has admitted that Girdawar had gone to the site for demarcation. So, in view of the testimony of DW2 Sumer Singh it becomes ample clear that gali 5 feet wide which was on the eastern side of the plot of the plaintiff has been encroached upon by the defendants which is required to be removed by the defendants.

The plea of learned counsel for the cross objector-defendant that the plaintiff has not given the dimensions of his plot and has not given Ghar number or Ahata number, is not tenable. The plaintiff has categorically pleaded in the reply to the counter claim that Ahata number and Ghar number was 133 and 137 respectively which was earlier the ownership of Hanuta son of Dunga. Though the plaintiff has failed to show any link between Hanuta son of Dunga and Ramanand son of Suraj Bhan, but there is admission of defendant that on western side of his plot there was property of Suraj Bhan and Ramanand from whom the plaintiff agreed to purchase the plot in question is none else than son of Suraj Bhan. The observation of learned trial court that plaintiff has claimed that he had become owner of suit property by virtue of agreement to sell does not give any title and plaintiff cannot be held owner in possession of the suit property on the basis of agreement to sell is not correct. No doubt the agreement to sell does not confer ownership of the proposed vendee but when there is admission of defendants that on eastern side there is property of plaintiff and plaintiff was in possession of that property then there remains no doubt that plaintiff is in established possession of the property as claimed by him or ownership of either plaintiff or defendants is not in question as the present suit is a suit for injunction. The suit and counter claim can very well be decided on the basis of possession of the parties. It is not a case of specific performance to prove the authenticity of the agreement

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to sell. There was no necessity of examining Ramanand to prove the delivery of the possession by him to the plaintiff because there is ample evidence on record to show that plaintiff is in possession of the suit property measuring 39 square yards. There should not have been any hitch in granting injunction as prayed for by the plaintiff and findings of learned lower court on issues No.1 and 2 are not legal and correct and are hereby set aside and issues No.1 and 2 stand decided in favour of the plaintiff.

Local commissioner in this case was sent by the Court and the report so furnished by local commissioner is admissible in evidence whether it is exhibited or not. If the defendant Sheo Chand was not satisfied with the report of local commissioner then he could have summoned local commissioner and could have cross-examined the local commissioner regarding the report submitted by him and from the report of local commissioner, it is evident that defendant Sheo Chand had encroached upon the gali 5 feet which was situated on western side of his plot and included the same in his plot. Learned trial court has rightly not accepted the counter claim of the defendants and has rightly dismissed the same. So finding of learned trial court on issue No.3 returned against defendants is accordingly affirmed.”

A bare reading of the abovesaid findings recorded by the learned District Judge would make it crystal clear that defendants-appellants had no case right from day one. In fact, defendant-appellant No.1 was found to have encroached upon 5 feet passage, which he wanted to retain. This was the reason that defendants-appellants filed their counter-claim before the learned trial court and cross-objections before the learned first appellate court but failed. Had the appellants been serious, they would have filed two separate regular second appeals but they did not do so, for the reasons best

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known to them.

Once the suit of the plaintiff as well as counter-claim of the defendants were dismissed by the learned trial court vide its common judgment and similarly, first appeal of the plaintiff was allowed whereas cross-objections of the defendant No.1-appellant Sheo Ram were dismissed by the learned District Judge, vide common impugned judgment and decree dated 16.4.2015, defendants-appellants were supposed to file two independent regular second appeals but they have not chosen to do so, for the undisclosed reasons. When the learned counsel for appellant was confronted with the cogent findings recorded by the learned first appellate court as well as non-filing of another appeal, he had no answer and rightly so, it being a matter of record.

When the ownership as well as possession of the plaintiff has gone undisputed on record, coupled with the fact that counter-claim before the learned trial court as well as cross-objections before the learned first appellate court filed by the defendants have been dismissed by recording concurrent findings of facts, no fault can be found with the abovesaid findings recorded by the learned first appellate court, thus, the impugned judgment deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned District Judge. 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 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

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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.

28.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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