

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

**RSA No.6008 of 2016
Date of decision:3.8.2017**

Mohd. Harun and others

...Appellants

Versus

Shabbir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Kul Bhushan Sharma, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful 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 plaintiff-respondent was decreed by the learned trial court, vide its impugned judgment and decree dated 30.5.2016 and the first appeal of the defendants was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 9.9.2016.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that the plaintiff was the owner in possession of agricultural land bearing Khewat No. 50/37-38 min, Khatoni No.56, Rect. No.38, Killa No.15/1/2(0-18), 16/1/1(2-17), Rect. No. 39, Killa No. 10/1(2-0), 11/(7-10), 20(8-0), 21(5-13), Khasra No. 211(0-9), total area measuring 27 kanal 7 marlas, which was situated in the revenue

estate of village Dhauj, Tehsil and District Faridabad, which had been partitioned by metes and bounds vide order dated 6.8.2001 and Mutation No.5401 dated 30.4.2003 was sanctioned through case titled as “Abdulla Vs. Abdul Hamid and others” passed by the court of Sh.Ram Kumar Beniwal, Assistant Collector, 2nd Grade, Faridabad. It was further averred that the said land had been partitioned and Sanad Taksim had been prepared along with delivery of physical possession vide order dated 26.6.2003 and the respective shares of the parties were handed over to the concerned parties. Plaintiff filed an objection in the partition suit that the suit land was not cultivable and required more than Rs.50,000/- for levelling at that time and the said land was given to the plaintiff with the consent of the defendants. It was further specifically mentioned that the defendants were not having any objections qua the suit land and since then physical possession was handed over in the presence and with consent of defendants because all the valuable and cultivable land was given to the defendants in pursuance of the said Sanand Taksim. Plaintiff already constructed a pacca house in Rect. No. 38, Killa No.16/1/1 and tube well connection was installed in Rect. No.39, Killa No.20 so the said chak i.e. the suit land was given in the share of the plaintiff and since then the plaintiff was continuously in exclusive physical possession of the suit land and the defendant had no concern qua the suit land in any manner whatsoever. It was further averred that during their partition proceedings, *Naksha Kha* was submitted on the same day to Assistant Collector 2nd Grade and defendants No.1 to 5 filed an objection which was declined up to Commissioner, Gurgaon Zone and accepted by Financial Commissioner

Revenue, Haryana, Chandigarh, who remanded the said partition proceedings for hearing objections on *Naksha Kha* pending in the court of Assistant Collector, 2nd Grade, Faridabad. In the objections, the defendants gave their written consent through reply of objection dated 21.9.2000 and physical possession was handed over by the revenue officials with the consent and in the presence of defendants through rapat No. 638 dated 26.6.2003. It was submitted by the plaintiff that defendants were intending to dispossess the plaintiff from the suit property by cultivating, harvesting the crop of the suit land forcibly and illegally without having any right, title or interest to do so and also interfering into the physical possession of the plaintiff. It was averred that on 20.10.2010 defendants along with some unknown elements came to the suit property with tractor and tried to dispossess the plaintiff from the suit property and, therefore, a complaint in the police post Dhauj Faridabad was lodged and allegedly police threatened and intimidated the plaintiff with criminal action against them, therefore, the plaintiff filed the suit for permanent injunction.

Having been put to notice, defendants No.1 to 5 and 8 to 10 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:-

- i. Whether the plaintiff has entitled a decree of permanent injunction restraining the defendants from interfering into peaceful possession of the plaintiff over the suit property?
OPP
- ii. Whether the suit of the plaintiff is not maintainable? OPD
- iii. Whether the plaintiff has not come to the court with clean hands and concealed the real and material facts ? OPD

- iv. Whether the plaintiff has no locus standi and no cause of action to file the present suit ? OPD
- v. Whether the suit has not properly valued for purpose of court fee and jurisdiction ? OPD
- vi. 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 plaintiff has duly proved his case. Accordingly, suit of the plaintiff for permanent injunction was decreed, vide its impugned judgment and decree dated 30.5.2016. 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 9.9.2016. 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 will leave no manner for doubt that the plaintiff brought on record cogent and convincing evidence and duly proved his pleaded case. Plaintiff also proved that he installed a tubewell in Rectangle No.39 Killa No.20. Said fact was duly corroborated by PW-2 Om Parkash and was also admitted by DW-1 Mohd. Yunus in his cross-examination. Further, plaintiff proved on record electricity bill as Ex.P5, thus, exclusive possession of the plaintiff was duly established on Rectangle No.38 Killa No.16/1 and Rectangle No.39 Killa No.20. DW-1 Mohd.Yunus admitted in his cross-examination that plaintiff was in

possession. 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.

The entire case of the defendants-appellants was based on alleged partition proceedings, which were totally irrelevant. When this Court asked the learned counsel for the appellants to refer even one relevant document, i.e. Khasra Girdawari to show prima facie that defendants-appellants were in possession over the suit land, he was unable to show any such document. So far as partition proceedings initiated at the hands of appellants were concerned, it goes without saying that law will take its own course.

Once no material was available on the record of the case in hand to suggest even remotely that appellants were in actual physical possession over the suit land, they have no case either on facts or in law. It was rightly observed by the learned courts below that once the appellants have failed to show their possession over the suit land, plaintiff was bound to succeed. 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.

Once the plaintiff has been found in settled and peaceful possession over the suit property, defendants-appellants had no right to disturb the possession of the plaintiff. In case, the appellants-defendants were intending to put their claim over the suit property, they could have

filed a suit for separate possession by way of partition, in accordance with law. So far as instant litigation is concerned, defendants-appellants have failed to make out any case in their favour. In this view of the matter, both the learned courts below have been found fully justified, while rendering their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

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 12 to 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“The plaintiff filed suit for injunction against the defendants restraining them from interfering into the peaceful possession of plaintiffs. Plaintiff himself appeared as PW1 and stated on the same stand as of his plaint. He also placed on record jamabandi Ex.P1 for the year 2006-07 wherein the plaintiff is shown as owner and in possession over the suit property. Plaintiff also placed on record copy of khasra girdawari for the year 2013-14 Ex.P3, it shows the possession of plaintiff over suit property in khasra no.38, killa no.15/1/2, killa no.16/1/1 and in khasra no. 39 in killa no.10/1, killa no.11, killa no.20 and killa no.21/2.

“It is argued by learned counsel for defendants that the documents placed on record by plaintiff were pertaining to year 2006-07 and 2013-14 whereas in the recent past the property has been partitioned in view of decision of Hon'ble High Court and, thereafter the plaintiff is not in possession of the suit property. Learned counsel for defendants based his arguments on the strength of Ex.D1 and Ex.D2 the judgments

of revenue records vide which the partition of suit property was sanctioned. Learned counsel for plaintiff contended that even after partition except few land which is very smaller part of suit property, the plaintiff remained in possession of the suit property. Partition does not change the status of plaintiff as owner and in possession over the suit property as the land remained in his possession even after partition. Learned counsel for plaintiff brought the attention of the court towards cross-examination of defendant DW1 wherein DW1 himself admitted possession of plaintiff over the suit property.

*In **Ramji Rao Vs. Jagdish Mallah AIR 2007 SC 900**, it is observed by Hon'ble Supreme Court by interpreting Section 38 of the Specific Relief Act, 1963 that an injunction restraining disturbance of possession will not be granted in favour of plaintiff who is not found to be in possession. In case of a permanent injunction based on protection of possessory title in which the plaintiff alleges that he is in possession, and that his possession is being threatened by the defendant, the plaintiff is entitled to sue for mere injunction without adding any other prayer for declaration of his rights etc. It is further observed that in a suit for permanent injunction restraining the defendants from interfering in the possession of the land based on possession of the land, the court shall grant a decree on the proof of possession and cannot go into the question of title of suit property. In **Thimmoiriah Vs. Shabira AIR 2008 Supreme Court 1275**, it is observed by Hon'ble Supreme Court that in a suit for permanent injunction to restrain the defendant from interfering with the peaceful possession and enjoyment of the property, an injunction can be granted on the basis of possession.*

*In **Krishan Kant Vs. Shobha AIR 1989 SC 2097**, it is observed by Hon'ble Supreme Court that even a trespasser was entitled to remain in possession unless dispossessed or vacated in accordance with law.*

It is settled proposition of law that in case of injunction from interference or dispossession from disputed property, possession alone is to be considered. In the present case, plaintiff sought the relief of injunction restraining the defendants from interfering into the peaceful possession of plaintiff over the suit property. The plaintiff himself proved his possession which also finds support from the proved documents Ex.P1 and Ex.P13 i.e. jamabandi and khasra girdawari respectively. It is settled proposition of law that initial onus is on the plaintiff to prove his case and plaintiff cannot rest his claim on the weakness of the defendants. In the present case, the plaintiff successfully proved his possession over the suit property. In a suit for injunction the sole consideration is remained only of possession and nothing else.”

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. 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