

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 6207 of 2016 (O&M)

Date of Decision:25.09.2017

Kanwaljit Singh

.....Appellant

Versus

Shindo and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Anupama Banot, Advocate for
Ms. Shweta Nahata, Advocate
for the applicant-appellant.

AVNEESH JHINGAN, J.

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 29.7.2016 whereby the First Appellate Court dismissed the appeal upholding the impugned judgment and decree dated 13.3.2015 passed by the trial Court.

The appellant-plaintiff filed a suit for permanent injunction to the effect that the respondents-defendants be restrained from interfering or dispossessing the plaintiff from his peaceful possession as owner of residential house measuring about 5 Marlas which is shown in the site plan dated 11.3.2014 situated in red dora of village Kheda District Tarn Taran.

The plaintiff averred that he is owner in possession of the disputed house where he is residing. In support of his claim, he relied upon that the electric meter is in the name of his father Gurmukh Singh and he has a ration card, voter identity card and other documents to establish that he is residing in the said house. Further averment was made that defendants were strangers and have no concern with the house in dispute. It was

alleged that respondents-defendants were interfering in his possession, therefore, a suit was instituted.

In pursuance to the notice defendants filed the written statement and defendant No.1 claimed that she was owner of 10 marlas land on which on the either side two rooms were built. The said property was inherited from her father Darshan Singh. She averred that half of the portion of the said property comprising 5 Marlas of land along with two rooms built thereon was sold to Sarabjit Singh son of Gurmukh Singh, who is the real brother of the plaintiff. It was further stated that plaintiff was residing alongwith his brother and father in the adjoining 5 Marlas land . The rest of 5 Marlas owned by defendant No.1 was being managed by Gurbaj Singh as she had to leave the village after her marriage and was putting up in her matrimonial home. The defendants claimed that the plaintiff had nothing to do with the remaining 5 Marlas of land and two rooms built thereon. It was further averred that as the plaintiff was residing with his father and brother in the 5 Marlas land sold to his brother, therefore, he was able to procure the voter card and ration card etc.

On the basis of the pleading, learned trial Court framed issues and during the trial plaintiff examined himself as PW1 and tendered his affidavit as Ex.PW1/A. Kulwant Singh, Draftsman, was examined as PW2 who tendered his affidavit as Ex.PW2/A. Kulwinder Singh was examined as PW3 who tendered his affidavit as Ex.PW3/A. In the documentary evidence, the plaintiff produced site plan Ex.P1, electric bill Ex.P2, ration card Ex.P3, electric bill Ex.P4, copy of Adhar Card Ex.P5 and copy of ration card Ex.P6.

On the other hand, defendant No.1 examined herself as DW1

and tendered her affidavit as Ex.DW1/A, Diwan Singh and Gurbaj Singh were examined as DW2 and DW3. They tendered their affidavits Ex. DW2/A and Ex.DW3/A respectively. Rasal Singh Nambardar appeared as DW4 and tendered affidavit Ex.DW4/A. In the documentary evidence, the defendants produced site plan Ex.D1, death certificate of Darshan Singh as Ex.D2, copy of Will Ex.D3, Jamabandi as Mark-A and Jamabandi for the year 1979-80 as Ex.DX.

The trial Court after examining the pleadings and evidence produced, came to the conclusion that plaintiff has not been able to establish that he was in possession of the suit land. It was further held that the documents cannot be relied upon to establish his possession of the suit property. It was held that defendant No.1 was able to establish her ownership with regard to the 5 Marlas land and two rooms built thereon. The suit for permanent injunction was dismissed.

The appellant-plaintiff felt aggrieved by the judgment and decree of trial Court and filed the first appeal which was dismissed by learned Additional District Judge, Tarn Taran, upholding the dismissal of suit for permanent injunction.

Hence, this regular second appeal at the hands of the appellant/plaintiff.

The learned Courts below on an analysis of the matter in issue and the evidence on record in its entirety concurrently found that no relief can be granted in suit for permanent injunction. The appellant has not been able to establish that he was in possession over the suit property.

Learned counsel for the appellant in appeal had raised four questions of law which are as under:

- "(i) Whether in the given facts and circumstances of the case, finding recorded by both the courts below in dismissing the suit of the plaintiff are wrong, illegal, perverse and are based on misreading of evidence?
- (ii) Whether in the given facts and circumstances of the case, the judgments and decree passed by both the courts below is the result of misreading and mis-construing the oral and documentary evidence led by the plaintiff?
- (iii) Whether Courts below have drawn the inferences unwarranted on the facts and law?
- (iv) Whether the grave and the manifest injustice has been caused to the appellant/plaintiff by the Courts below?"

But at the time of arguing the appeal, the counsel instead of addressing arguments on the questions raised, gave up the said questions and addressed grievance on two issues firstly that since the appellant-plaintiff had in his favour the ration card, adhar card and voter identity card etc to establish that he was residing in the disputed house and hence his possession was proved. Secondly the counsel argued that out of 10 marlas owned by Shindo (respondent-defendant No.1) 5 marlas were sold to his brother and 5 marlas were sold to the appellant/plaintiff.

With regard to first argument raised, the learned Courts below have dealt with the issue in detail. It has been established before the lower Court that Shindo daughter of Darshan Singh wife of Dalbir Singh inherited 10 marlas land in village Kheda Tehsil and District Tarn Taran. Out of the said 10 marlas, 5 marlas were sold to Sarabjit Singh son of Gurmukh Singh and the present plaintiff is real brother of Sarabjit Singh. He admittedly was residing with his brother. It is in this way that he was able to get the ration card, voter identity card and other documents showing

his residence in the said property. The respondent-defendant got married and her share of 5 marla land was being managed by Gurbaj Singh.

In order to establish his ownership and possession, the plaintiff produced Kulwinder Singh as PW-3, but in his cross-examination PW3 admitted that respondent-defendant No.1 had property in village Kheda. Even otherwise it was found that Kulwinder Singh had some litigation pending with Gurbaj Singh which could have prompted him to give evidence against the defendants. The plaintiff also exhibited rough site plan Ex.P1. The draftsman deposed as PW2. In his cross-examination, he also admitted that the rough site plan was prepared by him on instructions of the plaintiff and he never visited the site. Whereas Diwan Singh and Rasal Singh appeared as DW2 and DW4 respectively. Documents were also relied upon by the defendants to establish that the father of respondent/defendant No.1 Darshan Singh used to reside at village Kheda and that defendant Shindo inherited the suit property from her father.

From the above said material it was evident that plaintiff was not able to establish the ownership and possession over the suit property. Though in suit for permanent injunction, the Courts are not as such concerned with the ownership, but since the plaintiff had pleaded himself to be owner in possession, therefore, the onus had to be discharged by the plaintiff to prove his possession. The plaintiff failed at the threshold itself. The basis reliance of the plaintiff on the fact that electric meter was in the name of his father Gurmukh Singh and that he had voter card etc is understandable as he himself admitted that he was residing with his brother and father in the adjoining property to the suit property i.e. 5 marlas sold to Sarabjit Singh. In such circumstance, these documents cannot be pressed

into service to prove his possession.

The second argument raised by learned counsel for the appellant was that one part of the property was sold to Sarabjit Singh and the other part i.e. the property in dispute was sold to the plaintiff by Shindo. This plea has been raised for the first time in the regular second appeal. No such pleading is there in the written statement filed. No evidence has been led to substantiate the said claim. In such circumstance, mere bald statement that too at this belated stage, cannot be accepted and relied upon.

The First Appellate Court arrived at a judicious conclusion after re-considering and re-appreciating the facts of the case as well as the evidence available on record in its right perspective. The cogent and well convincing findings recorded by the learned First Appellate Authority deserve to be accepted.

No other issue has been raised.

Moreover, during the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. She also could not refer to any question of law, much less substantial question of law, which is sine-qua non for entertaining regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure.

The findings recorded by the First Appellate Court as well as the trial court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgments and decrees passed by the Courts below and the same deserves to be upheld.

No ground for interference has been made out.

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

25.09.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No