

RSA No. 5089 of 2015 (O&M)

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

RSA No. 5089 of 2015 (O&M)

Date of Decision: 7.9.2017

Ami Lal and another

.....Appellants

Vs.

Pinki Devi

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Munish Gupta, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendants are in 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 was decreed by the learned trial court vide its impugned judgment and decree dated 25.7.2014 and first appeal of the defendants was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 20.5.2015, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that plaintiff sought decree of permanent injunction against the defendants to the effect that the defendants be restrained from interfering into peaceful possession of the plaintiff over the land measuring 01 kanal 09 marla comprised in khewat no.21, khatoni no.43 to 47, kita 24 purchased by her out of total land measuring 116 kanal 11 marla as per jamabandi for the year 2002-03 situated within the revenue estate of village Basai, Tehsil and District Mohindergarh (hereinafter

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referred to as the suit property) vide sale deed No.1290 dated 28.07.2009 and mutation No.7671 dated 29.08.2009 qua the purchase land was sanctioned. The plaintiff since then had been coming owner in possession of the same and the defendants had no concern with the same. The defendants, being political and strong head persons, used to interfere in suit property of the plaintiff whereas they had no right to do so. The plaintiff requested the defendants several times not to interfere in the peaceful possession of the plaintiff over the suit property but they did not pay any heed. Hence finding no other alternate the suit was filed by the plaintiff.

Having been put to notice, defendants 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:-

1. Whether plaintiff is owner in possession of disputed property as alleged?OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the suit is time barred?OPD
4. Whether the plaintiff be estopped from filing the suit by her own act and conduct?OPD
5. Whether the plaintiff has no cause of action to file the present suit?OPD
6. Whether the defendants are entitled to protect their rights under section 53A of Transfer of Property Act? OPD
7. Whether the defendants are entitled for special costs under section 35A of CPC?OPD
8. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as

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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 has proved her case by bringing on record cogent and sufficient evidence. Accordingly, her suit for permanent injunction was decreed by the learned trial court, vide its impugned judgment and decree dated 25.7.2014. Feeling aggrieved, defendants filed their first appeal which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 20.5.2015. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

Entire case of the appellants-defendants revolves around the alleged writings (Ex.D1 to Ex.D4), whereby they claimed to have purchased the suit property. However, it is an undisputed fact situation obtaining on record that none of these documents i.e. Ex.D1 to Ex.D4 were registered sale deeds. Thus, documents which are claimed to be the documents of title by the appellants-defendants, cannot be accepted as such in the absence of any registered sale deed.

It is also not pleaded or argued case on behalf of the defendants-appellants that these writings (Ex. D1 to D4) were result of any family settlement and because of that reason, these documents were not requiring any registration. Once it is so, defendants-appellants were bound to fail in the absence of any document of title in their favour. That is what has been held by both the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

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Plaintiff-respondent has duly proved her pleaded case that she was having registered sale deed bearing No. 1290 dated 28.7.2009 in her favour. Further, mutation No. 7671 dated 29.8.2009 was also entered and sanctioned in favour of the plaintiff. It goes without saying that possession goes with the title. Neither the defendants-appellants filed any counter-claim, nor they set up any plea of adverse possession and that too, for no good reasons. Under these undisputed facts and circumstances of the case, it can be safely concluded that 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 a judicious conclusion, the learned Additional 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 14 and 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“ The case of the plaintiff is that she purchased 1 kanal 9 marla of land out of khewat no.21 khatoni no.43 to 47 kita 24 land measuring 116 kanal 11 marla situated within the revenue estate of village Basai, Tehsil and District Mohindergarh as per jamabandi for the year 2002-03 from one Krishan Singh vide sale deed no.1290 dated 28.07.2009 and mutation no.7671 dated 29.08.2009 was sanctioned and since then she has been coming owner in possession of the suit property and the sale deed in favour of the plaintiff is a registered document and even witnesses of the defendants i.e. DW4 Raghbir Singh has admitted that Krishan Singh son of Phool Singh, resident of village Basai had executed the sale deed bearing vasika no.1290 dated 28.07.2009 in favour of Pinki wife of Surender

the plaintiff in this case. Perusal of jamabandi for the year 2007-08 Ex.P3 further shows that Krishan Singh son of Phool Singh is shown to have 355/2347 to the extent of 1/5th share whereas he should have been shown to have 355/14082 share as besides Krishan Singh his two brothers Jainarain Singh and Mittarpal Singh and his two sisters Gulab Bai and Keshar Bai and his mother Manbai have equal share in 355/2347 share. Thus Krishan Singh the vendee of the plaintiff had 355 share out of 14082 share and vide sale deed no.1290 dated 28.07.2009 Ex.P1 he sold 355 share out of 28164 share. Thus, Krishan Singh was still having 355/28164 share with him and Krishan Singh has sold the specific portion of the land bounded on the eastern side-property of Jaibhagwan; on the western side property of Rampal; on the northern side-passage and on the southern side-property of Hazari Singh etc. So, the plaintiff at the most has right to preserve and protect the land which she purchased from Krishan Singh.

The appellants/defendants are claiming that 10 marla of land was purchased by Sujan Singh from husband of plaintiff namely Surender and Surender had purchased the land from Krishan Singh the owner of the land and bahi entry was executed. Similarly, 11 marla of land was purchased by Suresh the son of defendant no.1 Ami Lal from Raghbir Singh and Raghbir Singh had purchased the land from Hoshiyar Singh and Hoshiyar Singh had purchased the land from Krishan Singh and similarly Krishan Singh the original owner of the property had transferred 11 marla of land to Hoshiyar Singh and Hoshiyar Singh had sold that land to Raghbir Singh and later on Raghbir Singh had sold the land to defendant no.1 by bahi writing dated 10.06.2009 and it is the averment of both the defendants that they had been delivered the possession and they raised their pucca houses and boundary wall and they have proved the site plans Ex.DW10/A and Ex.DW10/B and the defendants have examined DW10 Rajender Kumar Verma

Draftsman to prove these site plans and perusal of the site plans shows that the boundaries of the plot of plaintiff are different to the boundaries of plots as shown in the site plan Ex.DW10/A of Sukan and Ex.DW10/B of Ami Lal. The plot of Sukan Singh is shown to be bounded by house of Madan Lal Nai having 39' 3" on the eastern side; rasta having 49' on the western side; house of Bajrang Sharma having 54' 6 " on the northern side and by house of Jai Bhagwan Nai having 51' 3" on the southern side and similarly the site plan Ex.DW10/B got prepared by Ami Lal shows plot of Jaibhagwan Nai having 56' on the eastern side; rasta having 56' on the western side; plot of Jai Singh son of Mangal Singh having 50' on the northern side and agriculture land of Krishan Pal Singh having 50' on the southern side. So, boundaries of all the three plots i.e. of plaintiff as well as defendant no.1 and defendant no.2 are different. Though bahi entries are not sufficient to transfer the ownership right in a property whose value is more than Rs.100/- and 10 marla of land in favour of Sukan Singh and 11 marla of land in favour of Suresh son of Ami Lal could have been transferred by way of registered sale deed only but from own case of the plaintiff it can be seen that she is claiming her ownership over plot measuring 1 kanal 9 marla purchased by her vide sale deed no.1290 dated 28.07.2009 and the defendants are not claiming any right over the suit property rather their claim of possession is of different sites as shown in the site plan Ex.DW10/A and Ex.DW10/B and the defendants have got no right to interfere in the land of the plaintiff. The plaintiff has got right to protect the property which she has purchased vide sale deed no.1290 dated 28.07.2009. The learned lower court has rightly granted injunction in favour of the plaintiff regarding the property measuring 1 kanal 9 marla purchased by her vide sale deed no.1290 dated 28.07.2009."

In case defendants-appellants raised boundary walls and also

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put some tin sheds in and around the suit property during the pendency of the suit for permanent injunction filed by the plaintiff, said overt act on the part of the defendants will not confer any right on them. Once the title of the plaintiff has been duly established on record by way of abovesaid sale deed, defendants-appellants had no right, whatsoever, right from day one to interfere in the peaceful possession of the plaintiff-respondent. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned courts below in their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Another argument raised by the learned counsel for the appellants for proving possession of the appellants over the suit property, that plaintiff-respondent moved a contempt petition under Order XXXIX Rule 2-A CPC, alleging that during pendency of the civil suit for permanent injunction filed by her, defendants had raised boundary walls and put tin-sheds in the suit property, was finally dismissed by the learned court of competent jurisdiction, has been duly considered by this Court but the same has been found wholly misplaced and not worth acceptance.

It is so said because ownership of the plaintiff has been duly established on record, as noticed hereinabove, and that too, by way of documentary evidence in the form of abovesaid sale deed and mutation. On the contrary, defendants-appellants could not show any document of title in their favour. Mere raising boundary walls around the suit property and putting some tin-sheds therein, at the hands of the defendants-appellants, will not *ipso facto* treated to be sufficient to establish their peaceful possession over the suit property, because admittedly plaintiff was the owner

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of the suit property.

Further, technicalities alone will not be determinative factor for deciding the lis between the parties. Learned counsel for the appellants-defendants could not raise any meaningful arguments on merits of the case in favour of the appellants, as there was none available to the appellants. Even if the appellants are treated to be strong persons and the plaintiff-respondent was a poor lady, authority of law would always tilt in favour of the plaintiff in the present case, because she was on the right path. Truth must prevail. Appellants-defendants could not have been permitted to take law in their hands, so as to put their wholly unwarranted and unauthorised possession over the suit land, during the pendency of the suit for permanent injunction filed by the plaintiff. Thus, the abovesaid argument raised by the learned counsel for the appellants-defendants has been found without any force.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

- 1) Pratibha Singh and another Vs. Shanti Devi Prasad and another, 2003 (2) SCC 330 (SC)
- 2) H.K.K. Bali and another Vs. M/S Cyma Exports Pvt. Ltd and another, 2011 (15) SCC 370 (SC)
- 3) Dr. K.P. Ranga Rao Vs. K.V. Venkatesham and others, 2015 (1) RCR (civil) 301 (SC)
- 4) Mehar Singh and another Vs. Kasturi Ram and others, 1962 AIR (Punjab) 394 (P&H)
- 5) M/s Dashmesh Rice Mills and others Vs. M/s Govind Ram Anil Kumar, 2003 (3) RCR 9civil) 734 (P&H).

During the course of hearing, learned counsel for the appellants

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failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. 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 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.

7.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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