

RSA No. 5173 of 2015 (O&M)

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

RSA No. 5173 of 2015 (O&M)

Date of Decision: 2.3.2017

Bhagwan Singh

.....Appellant

Vs.

Piar Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Manbir Singh Batth, Advocate and
Mr. Neeraj Madaan, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 2.3.2015 passed by learned Additional District Judge, allowing first appeal of the defendants and setting aside the judgment and decree dated 3.12.2013 of the learned trial court whereby suit of the plaintiff for permanent injunction was decreed, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that suit for permanent injunction, restraining the defendants from causing any illegal interference

RSA No. 5173 of 2015 (O&M)

into peaceful possession of plaintiff as gair-marusi over land measuring 16 Kanals as detailed in the head note of plaint, was filed by the plaintiff on the averments that suit land was owned by Provincial Government and plaintiff had been cultivating the suit land as gair-marusi for the last so many years. The plaintiff had never surrendered the possession of suit land in favour of any person, including the defendants, nor any ejectment order was passed against the plaintiff by any competent court of jurisdiction. The defendants had got no right, concern or connection with the possession of the plaintiff over the suit land but they intend to dispossess the plaintiff from the suit land forcibly.

Defendants were served in the suit. Defendants No.5 and 6 did not appear and they were proceeded against ex parte. Suit was dismissed as withdrawn by the plaintiff against defendants No.1 and 7. Defendants No. 2, 3 and 4 appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication controverting the plea taken in written statement and reiterating the stand pleaded in the plaint. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is owner of suit land? OPP
2. Whether the defendants are trying to interfere in the cultivating possession of plaintiff over the suit land? OPP
3. Whether the plaintiff has concealed the material facts from the court? OPD
4. Whether the plaintiff has no cause of action or locus-standi to file the present suit? OPD
5. Whether suit is not maintainable? OPD
6. Relief.

With a view to prove their respective pleaded cases, both the

RSA No. 5173 of 2015 (O&M)

parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has proved his case. Accordingly, his suit for permanent injunction was decreed vide judgment and decree dated 3.12.2013. Defendants filed their first appeal, which came to be allowed by the learned first appellate court vide its impugned judgment and decree dated 2.3.2015. Hence this regular second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that owner of the suit land was Provincial Government. It is also a matter of record that, while filing the suit for permanent injunction, plaintiff did not implead the Provincial Government-true owner, as party-defendant. It is the settled proposition of law that injunction cannot be granted against the true owner and more particularly, as in the present case, behind the back of true owner. Since these crucial aspects of the matter were not properly appreciated by the learned trial court, learned first appellate court rightly accepted the first appeal of the defendants. Having said that, this Court feels no hesitation to conclude that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld.

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

1.Premjit Ratansey Shah V. Union of India, 1994 (5) SCC 547 (SC)

RSA No. 5173 of 2015 (O&M)

2. Prataprai N. Kothari Vs. John Braganza, 1999 (4) SCC 403 (SC)
3. Hanumanthappa V. Muninarayanappa, 1996 (11) SCC 696 (SC)
4. Government of Andhra Pradesh thr. Principal Secretary and others V. Pratap Karan and others V. 2016 (2) SCC 82 (SC)
5. Om Parkash V. State of Haryana and others, 1999 (1) CurLJ8 (P&H)
6. Sajjan Singh and another Vs. Gram Panchayat and others, 2010 (39) RCR (civil) 267 (P&H)

Before reversing the findings recorded by the learned trial court, learned first appellate court examined, considered and appreciated true facts of the case in the correct perspective. Cogent findings recorded by the learned first appellate court in para 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“Admittedly, the land in question is owned by Provincial Govt. and in order to claim possession over the suit land, the true owner was the necessary party to be joined in the present case but there is nothing in the plaintiff evidence on record as to why the true owner of the land in question was not arrayed as a party in the present suit. This aspect has not been touched by the learned Lower Court while passing the Judgment in question. Since the relief of permanent injunction was claimed by the plaintiff, as such, the plaintiff was under legal obligation to prove his case, without taking any benefit from the weaknesses of the defendants. No revenue receipts have been proved on file by the plaintiff showing if the plaintiff had been paying land revenue qua the land in question to the Provincial Govt. No doubt,

RSA No. 5173 of 2015 (O&M)

the defendants have also not proved on file any revenue receipts showing payment of any land revenue to the Provincial Govt. but the onus to prove possession of the land in question was on the plaintiff and it was the duty of the plaintiff to prove said revenue receipts on record in order to show that the possession of the plaintiff was legal possession in favour of the plaintiff.”

During the course of hearing, when repeatedly and specifically asked to give any reasonable explanation, as to how injunction could have been granted against the true owner and why the appellant-plaintiff did not implead the Provincial Government-true owner, as party-defendant to the suit for injunction, he had no answer and rightly so, it being a matter of record. In this view of the matter, it is unhesitatingly held that learned first appellate was well justified in allowing the first appeal of the defendants and the impugned judgment and decree deserves to be upheld, for this reason also.

In fact, cogent findings recorded by learned first appellate court have been found based on sound reasons and the same deserve to be upheld. Learned counsel for the appellant failed to point out any patent illegality or perversity in findings recorded by learned first appellate court. . He also could not point out 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 judgments of 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.**

RSA No. 5173 of 2015 (O&M)

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.

(RAMESHWAR SINGH MALIK)
JUDGE

2.3.2017
Ak Sharma

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