

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5296 of 2015 (O&M)
Date of decision: 04.08.2017

Joginder

... Appellant

Vs.

Shubham (minor) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Munish Mittal, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Defendant No.1 is in regular second appeal against the impugned judgment of reversal, whereby first appeal of the plaintiffs was allowed by the learned first appellate Court vide its impugned judgment and decree dated 07.04.2015 in their suit for permanent injunction, setting aside the judgment and decree dated 06.10.2012 passed by the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of the impugned judgment, are that grandfather of the plaintiffs namely Ram Sarup was recorded owner of land to the extent of 1/4th share in land measuring 4 kanals 6 marlas, comprised in khewat No.141/139, khatoni No.185, rect. No.41, killa No.23(4-6), i.e. 4 Kanals 4 Marlas chahi and 0K-02 Marla Gair Mumkin Bara, situated in village Badarpur, Tehsil Indri, District Karnal vide jamabandi for the year 2002-03. The said Ram Sarup had given the

actual and physical possession of land measuring 0 kanal 2 marlas, gair mumkin bara, which was part and parcel of rect. No.41, killa No.23 i.e. suit land to the fathers of the plaintiffs.

It was further the case of plaintiffs that their fathers had constructed their residential house over the suit land about 17-18 years back with their own expenses, whereas the defendants never spent even a single penny on the construction of house in question. The plaintiffs were in exclusive possession of the suit land and no partition of the suit land had taken place till date and that several trees i.e. 32 trees of Safeda, 7 trees of Mango, 2 trees of Guava, 2 trees of Shisham, one tree of Neem, one tree of Nimboo, 5 trees of Papaya and three trees of Tool were standing in the suit land. The plaintiffs were using the suit land for their cattle shed etc. The said Ram Sarup had died on 29.10.2007 and after his death, mutation No.1777 was entered and sanctioned in favour of the plaintiffs and sons of defendants namely Rakesh Kumar, Pardeep Kumar, Sukhdev Singh, Amar Kumar, Ankit Kumar and Ritik. The defendants, taking undue advantage of the revenue entries in the name of their sons, were bent upon to demolish the house in question and were also bent upon to cut and remove the trees standing in the suit land, forcibly and illegally, for which they had no right, title or interest. It was further pleaded that on 30.10.2008, the defendants along with some gunda elements tried to demolish the house in question and also tried to cut and remove the trees standing in the suit land illegally and forcibly, but they could not succeed in their evil design due to the timely intervention of the respectable persons of the village. Despite repeated requests, the defendants were adamant and refused to admit the claim of the plaintiffs.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the plaintiffs have no locus standi to file and maintain the present suit? OPP
4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPP
5. Whether the suit of the plaintiffs is bad for misjoinder and non-joinder of the necessary parties? OPD
6. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced 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 plaintiffs have failed to prove their case. Accordingly, their suit for permanent injunction was dismissed by the learned trial Court vide its judgment and decree dated 06.10.2012. Feeling aggrieved, plaintiffs filed their first appeal, which was allowed by the learned first appellate Court vide impugned judgment and decree dated 07.04.2015. Hence this regular second appeal at the hands of defendant No.1.

Heard learned counsel for the appellant.

A bare reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that learned trial Court fell in serious error of law, while passing the judgment and decree dated 06.10.2012, dismissing the suit for permanent injunction filed by the plaintiffs-respondents. It is so said because mutation Ex.D9 was entered on the basis of Will dated 24.03.2006. The suit property was mutated from Ram Sarup in favour of the plaintiffs and sons of the defendants. It becomes clear that the suit property was joint. Plaintiffs as well as the sons of the defendants were co-sharers.

No doubt, both the parties to the litigation have tried to prove their exclusive possession, placing reliance on some electricity bills. However, since it was the name of Ram Sarup, predecessor-in-interest of the parties, which was recorded therein, electricity bills alone would not prove the exclusive possession of either of the parties over the suit land. It is also a matter of record that defendants themselves were not the co-sharers in the suit land. These were their sons, who were co-sharers. In this view of the matter, it can be safely concluded that the defendants-appellant had no right to resist the genuine claim of the plaintiffs. Having said that, this Court feels no hesitation to conclude that the learned first appellate Court rightly set aside the judgment and decree dated 06.10.2012 passed by the learned trial Court, because of which the impugned judgment and decree dated 07.04.2015 deserve to be upheld.

It is also not in dispute that the plaintiffs were living in their residential house constructed over the suit land. Their ownership was also not in dispute. On the other hand, defendants-appellants were trying to change the

nature of suit property by demolishing the construction raised by the plaintiffs over the suit property. This could not have been permitted. If the defendants were intending to do so, they were bound to seek separate possession by way of partition of the suit property, which was admittedly joint in nature. Having a genuine and bonafide apprehension, plaintiffs were justified in approaching the Court by filing the present suit for permanent injunction, which was rightly decreed by the learned first appellate Court, by passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

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. ***Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, 2004 (8) SCC 488 (SC).***
2. ***Bachan Singh Vs. Swaran Singh, 2000 (3) RCR (Civil) 70 (P&H)***
3. ***Ram Niwas Vs. Jai Ram alias Tej Ram, 2000 (3) RCR (Civil) 738 (P&H)***
4. ***Ronki Ram Vs. Prem Saini and others, 2007 (4) RCR (Civil) 304 (P&H).***

Before arriving at his judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned first appellate Court in paras 10 and 11 of the impugned judgment, which deserve to be noticed here, read as under: -

“Although the plaintiff-appellants have claimed in the plaint that after the death of Ram Sarup, they came in exclusive possession of

the suit land measuring 2 marlas comprised in rect. No.41 killa no.23 as Ram Sarup had given actual and physical possession of the suit land to the fathers of the plaintiff-appellants during his life time, but this fact could not be proved on the case file by the appellant-plaintiffs. Although from the evidence available on record, it is established that Ram Sarup was recorded as owner of the suit land measuring 2 marlas along with other land measuring 4 kanals 4 marlas to the extent of 1/4th share as per the jamabandi for the year 2002-03 but Ram Sarup himself was not in exclusive possession of the suit land, so the question of delivery of exclusive possession of the suit land to the fathers of the plaintiff-appellants did not arise. On the other hand, there is jamabandi for the year 2002-03 Ex.D10 which clearly shows that plaintiffs and sons of defendants are recorded as co-sharers in the suit property. It is also admitted fact that the suit property has not yet been partitioned between the co-sharers. During the pendency of the suit, a local commissioner was also appointed by the court who had visited the spot and had reported that there exists a house built over the suit property and there exists several trees. However, neither local commissioner had reported nor he was competent to report as to which of the parties was in exclusive possession of the suit land. In the mutation Ex.D9 entered on the basis of a Will dated 24.3.2006, the suit property was mutated from Ram Sarup in favour of plaintiffs and sons of defendants. Thus, it is clearly established on record that suit property is joint in which plaintiffs

and sons of defendants are co-sharers. Although both the parties have proved certain electricity bills and receipts Ex.P1 to Ex.P20 and Ex.D1 to Ex.D8 but in all those bills, the name of Ram Sarup, their predecessor in interest, is mentioned. Thus, those electricity bills also do not prove the exclusive possession of either of the parties over the suit land.

That being the position, the question arises whether the plaintiffs are entitled to seek injunction against the defendants. The trial court had observed that a co-sharer has no right to seek injunction against the other co-sharer and by observing so, the trial court had dismissed the suit of the plaintiffs. There is no dispute to the legal proposition laid down in the reported case relied upon by the trial court but the fact remains that no co-sharer can change the nature of the suit property or can demolish the construction existing over the suit property until the land is partitioned by metes and bounds. Ld. trial court had lost sight of the fact that the injunction has been sought by the plaintiffs seeking restraint against the defendants from demolishing the construction of the house existing over the joint land and from cutting the trees over the land. Even if the defendants are co-sharers of the suit land, they have no right to demolish the construction and to cut the trees without getting the suit land partitioned. Moreover, the defendants themselves are not the co-sharers in the suit land and rather their sons are co-sharers. Thus, the defendants themselves have no right, title or interest in the suit

land and they cannot resist the claim of plaintiffs in any capacity. The injunction regarding interference in the joint possession cannot be sought by a co-sharer against the other co-sharer but injunction regarding change of nature and demolition of the construction existing over the joint property can very well be sought by a co-sharer. Thus, as the suit of the plaintiffs was maintainable and they had the right to seek injunction against the defendants restraining them from changing nature of the suit property and from demolishing the construction existing over the suit property, the findings of ld. trial court are not correct and not according to the legal proposition and the same are liable to be set aside.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate Court. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the 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 **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality has been found in the impugned judgment and

decree passed by the learned first appellate Court, the same deserve to be upheld. The present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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.

04.08.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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