

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

RSA No.6697 of 2016

Date of decision:14.7.2017

Pal Singh (deceased) through LR

...Appellant

Versus

Manju and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sarju Puri, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Defendant is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession and recovery of damages for use and occupation of the suit property was decreed by the learned trial court, vide its impugned judgment and decree dated 17.12.2013 and first appeal of the defendant was dismissed by the learned first appellate court, vide its impugned judgment and decree dated 9.8.2016, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that the land in dispute measuring 20 kanals 2 marlas was the ownership of plaintiffs but the same was in illegal possession of the defendant. They (plaintiff) were the owners of

the suit land in equal shares. Previously this property was joint with Satya Nand, Kusum, Sat Parkash and the others but thereafter a family partition had taken place and the suit property came into the exclusive possession of the plaintiffs. Mutation No. 1792 was also sanctioned regarding the same. The defendant was in possession of the suit property for the last 5-6 years but on being requested the defendant refused to hand over the vacant possession of the property to the plaintiffs. As such, the possession of the defendant was that of a trespasser and he had also not paid any compensation to the plaintiffs. Hence, the above-suit was filed for the possession of the suit land, recovery of compensation and damages for illegal use of the land and for injunction.

Having been put to notice, defendant appeared and filed his 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:-

- i. Whether the plaintiff is entitled to possession of the land as owner, as prayed for? OPP.
- ii. Whether the plaintiff is entitled to recovery of the amount of Rs.1,50,000/-(Rs. 25,00/- per kanal per year) along with interest as compensation as prayed for?OPP.
- iii. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP
- iv. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
- v. Whether the defendant is the owner of the suit land? OPP.

- vi. Whether the plaintiff has got no locus standi to file the present suit?OPD
- vii. Whether the suit is not maintainable? OPD
- viii. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
- ix. Whether the suit is time barred? OPD
- x. Whether this court has no jurisdiction to try and decide the present suit?OPD
- xi. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. Plaintiffs brought on record voluminous evidence in support of their pleaded case, whereas the defendant himself appeared as DW1 and examined one more witness Balraj Singh as Ex.DW2, in addition to placing on record some documents. 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 plaintiffs have duly proved their case by leading cogent and convincing evidence. Accordingly, suit of the plaintiffs for possession and for compensation on account of illegal use and occupation of the suit land as well as damages was decreed, vide impugned judgment and decree dated 17.12.2013. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 9.8.2016. Hence this second appeal, at the hands of the unsuccessful defendant.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and

decrees passed by the learned courts below will make it crystal clear that the appellant-defendant had no case right from day one either on facts or in law. Initially, defendant tried to establish his ownership on the basis of alleged allotment of surplus area by the competent authority and claimed his possession on the suit land as owner thereof. Accordingly, issue No.5 was framed by the learned trial court as to whether the defendant is owner of the suit land. Plaintiffs have duly proved their pleaded case by leading cogent and convincing evidence, which was voluminous in nature. However, defendant-appellant miserably failed to prove his case, while not producing any relevant material on record.

In fact, defendant-appellant has been found taking self-contradictory stands from time to time, as per his own pleaded case. It is so said because when defendant could not prove his ownership on the basis of alleged allotment, he tried to take a complete somersault and claimed himself to be a *gair marusi* i.e. tenant at will. Case of the defendant-appellant qua his claim of ownership was completely falsified by a detailed report called from the office of Deputy Commissioner, which was duly proved on record as Ex.P36.

This report has testified the ownership of the plaintiffs as per the relevant revenue record, whereas defendant was found in possession of the suit land. It was also specifically mentioned in the said report Ex.P36 that there was no entry of surplus land as per the record nor there was any mutation in favour of the government. Once it has been duly proved with the help of revenue record coming from the proper custody, i.e. office of the

Tehsildar and the Deputy Commissioner, plea of ownership on the basis of allotment of surplus area taken by the defendant-appellant falls flat.

There was other sufficient, documentary as well as oral evidence available on record to completely falsify the stand taken by the defendant-appellant. Appellant, while appearing as his own witness to support his pleaded case, admitted that Shri Kishori Lal-predecessor-in-interest of the plaintiffs was the original owner of the suit land. He also stated that he was not original resident of this village in whose revenue estate the suit land is situated. He shifted to this village Bachawal where the suit land is situated, from other village namely Samipur. He also admitted that he was residing in an area of 2 ½ kanals out of which 10-12 marlas were lying vacant.

Appellant did not purchase the house in which he was residing because he occupied the same as it was lying vacant. Defendant-appellant also admitted that he took the possession of the suit land from Kishori Lal, who himself gave the possession. Even if the statement suffered by defendant-appellant is treated to be correct in this regard, he could have been at the most treated as a licensee and not even the tenant. It is so said because defendant-appellant failed to prove any lease-deed or rent note or any rent receipts qua the suit land so as to prove his long tenancy.

Once the appellant himself admitted his possession to be a permissive, such possession even if it is long in duration, will not confer any kind of right on the defendant because the ownership of such land remained with Shri Kishori Lal. Later on, the suit land came to be inherited

by the legal representatives of late Shri Kishori Lal vide mutation No.1350, which is clearly reflected in the jamabandi for the year 1982-83 Ex.P12. After the death of Smt. Raj Dulari, wife of late Shri Kishori Lal, land left behind by her, out of the suit land, came to be mutated in favour of her legal representatives, vide Mutation No.1550, which is reflected in the jamabandi for the year 1982-83 Ex.P16. Defendant-appellant never challenged either of the above-said mutations.

So far as the land purchased by the defendant from late Shri Kishori Lal is concerned, said land is not in dispute in the present litigation. It seems that after purchasing some land from Shri Kishori Lal, defendant turned dishonest and put his illegal possession over the land in dispute and kept on depriving benefit therefrom by cultivating the same. It is also relevant to note here that defendant-appellant did not take the plea of adverse possession because initially he was claiming himself to be owner 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 argument raised on behalf of the appellant is based on technicalities alone without there being any substance in the case of the appellant. It is also not pleaded or argued case on behalf of the appellant that he ever sought a declaration that he was entitled to be declared for any occupancy rights under the relevant provisions of law.

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 16 and 17 of its impugned judgment, which deserve to be noticed here, read as under:-

“As mentioned above, one of the grounds of this appeal is that the learned trial Court has not framed proper issues on the basis of pleadings of the parties. A perusal of the record reveals that for the adjudication of the dispute, the learned trial Court had framed as many as 10 issues and there is nothing available on record to show that any application for framing of the additional issue(s) or any objection in relation to the same had ever been raised by the defendant/appellant. On going through the issues framed by the learned trial Court, one could say that some of them were not couched properly, and also that the framing of some of these issues in the negative form could have been avoided. There is however nothing to show that the issues were not framed on the basis of the pleadings of the parties. During the course of arguments on the appeal also, the defendant/appellant has failed to substantiate the plea to this effect raised on his behalf, which is found to be nothing more than a bald assertion. Some of the grounds of appeal are rather found to be self contradictory. For instance, the defendant/appellant had taken a specific plea regarding the non joinder of the legal heirs of Kishori Lal. In his written statement to the plaint, he had however himself taken a preliminary objection that suit had been filed by the plaintiffs in connivance with the order legal heirs of Kishori Lal, meaning thereby that plaintiff had filed the suit with the concurrence of the other legal heirs of Kishori Lal. As such, defendant/appel-

lant was estopped from raising the plea that the suit was bad for non-joinder of other legal heirs of Kishori Lal. He has also not been in a position to plead and prove as to when the land belonging to Kishori Lal was declared as 'surplus' or when the same was allotted to him. He has even failed to mention such crucial details in the pleadings but is primarily relying upon the photocopy of a document which has been brought on record as Mark 'A'. During his cross-examination as the DW1, defendant/appellant Pal Singh has admitted that the land comprised in some of the Khasra numbers which are mentioned in Mark 'A' had been purchased by him from Kishori Lal vide two separate sale deeds (both dated 24.07.1974). If the land in dispute had been validly allotted to defendant/appellant Pal Singh, there was no need of occasion for him to purchase some portion of the same from Kishori Lal. It has been rightly observed by the learned trial Court that some of the Khasra numbers of the land in dispute are not even mentioned in the above said document (Mark'A'). The defendant/appellant has also failed to bring on record the terms and conditions subject to which the allotment, as claimed by him, was made in his favour. He has also failed to prove that the amount payable in lieu of the allotted land, had in fact been paid by him within the stipulated period. He has also failed to plead and prove the approximate duration when and how he came into the possession of the suit land. It needs no emphasis that in order to succeed, the plaintiffs were required to prove their own case and therefore they could not take the advantage of the above weaknesses in the case of the defendant/appellant. The pleadings of the parties as well as the oral and documentary evidence available on record leave no scope of doubt that Kishori Lal was the owner of the land measuring 70 Kanals 10 Marlas, inclu-

sive of the land which is the subject matter of the present case. There is also no dispute regarding the fact that the plaintiffs/respondents are claiming through Kishori Lal. It is well settled that such a suit for possession on the basis of title is duly maintainable. It is also well settled that one of the co-owners can file such a suit for possession on behalf of the other co-owners. As such, the above preliminary objections raised by the defendant/appellant to the maintainability of the suit and that the same was bad due to non-joinder of the necessary parties, being devoid of merit, have been rightly decided against the defendant/appellant and in favour of the plaintiffs/respondents.

As mentioned above, ample evidence is available on record to prove that the plaintiffs, who were claiming through Kishori Lal, were having the title to the suit property. The evidence available on record however does not prove that the suit land had been declared as surplus. The defendant/appellant had also failed to plead and prove the allotment of the suit land in his own favour. He has admitted that he had taken the possession from Kishori Lal but he has not taken the plea of adverse possession. As already mentioned above, defendant-appellant Pal Singh, has not been in a position to prove as to when he came into the possession of the suit land. He has heavily relied upon a copy of the allotment order (Mark 'A') but he has not been in a position to bring on record the terms and conditions of the allotment; and also to prove that those conditions were fulfilled by him. As the plaintiffs had sought the possession of the suit land on the basis of the title, their claim was also not barred by limitation.”

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

1. **Pratibha Singh and another Vs. Shanti Devi Prasad and another, 2003 (1) RCR (Civil) 316 (SC;**
2. **Tilak Ram and another Vs. Kartara (Deceased) through LRs and another, 2008(12) SCC 634;**
3. **Jagadeesh and another Vs. State of Karnataka and othes, 2008 AIR (SC) 1304;**
4. **H.K.K. Bali and another Vs. M/s Cyma Exports Pvt. Ltd. and another, 2011 (15) SCC 370;**
5. **Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequeria (Dead) through LRs and others, 2012 (5) SCC 370;**
6. **Dr.K.P.Ranga Rao Vs. K.V.Venkatesham and others, 2015 (1) RCR (Civil) 301 (SC);**
7. **Mehar Singh and another Vs. Kasturi Ram and others, 1962 AIR (Punjab) 394 (FB)**
8. **Ram Karan Vs. The Financial Commissioner and others, 1980 PLJ 295;**
9. **Jagjit Singh Vs. Financial Commissioner, Haryana and others, 1981 PLJ 367 (P&H);**
10. **Suraj Bhanand and others Vs. Mir Singh, 1987 RRR 19 (P&H);**
11. **Gurdershan Singh and others Vs. Hardyal Singh and others, 1992 (1) RRR 243 (P&H)**
12. **M/s Dashmesh Rice Mills and others Vs. M/s**

- Govind Ram Anil Kumar, 2003 (3) RCR (Civil) 734 (P&H)**
- 13.Ram Lal and others Vs. Jagdish Singh and others, 2004(3) RCR (Civil) 800;**
- 14.Jaspret Singh Vs. Manoj Kumar, 2009(4) Law Herald 2579 (P&H)**
- 15.Jit Singh Vs. Umrao Singh and others, 2010 (4) PLR 550 (P&H);**
- 16.Om Parkash Vs. Chaudhri Ram, 2010 (13) RCR (Civil) 297**

In a suit for possession like the one in hand, the Hon'ble Supreme Court in paras 70 to 72 of its judgment in **Maria Margarida Sequeria Fernandes's** case (supra), held as under:-

“70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

- (a) who is or are the owner or owners of the property;*
- (b) title of the property;*
- (c) who is in possession of the title documents*
- (d) identity of the claimant or claimants to possession;*
- (e) the date of entry into possession;*
- (f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;*
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;*

(h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;

(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;

(j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and

(k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.”

Again, the Hon'ble Supreme Court summed up the principles of law in para 101 of its judgment in **Maria Margarida Sequeria Fernandes's** case (supra), which can be gainfully followed in the present case, read as under:-

“101. Principles of law which emerge in this case are crystallized as under :-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

2. *Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*
3. *The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
4. *The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.*
5. *The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”*

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. 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.

14.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No