

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5390 of 2015 (O&M)
Date of decision: 04.08.2017

Ram Karan

... Appellant

Vs.

Braham Parkash

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Minderjeet Yadav, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present appeal is directed against the impugned judgment and decree dated 27.01.2014 passed by the learned trial Court, dismissing the suit for permanent injunction and also the impugned judgment and decree dated 12.08.2015 passed by the learned Additional District Judge, whereby first appeal of the plaintiff was dismissed, upholding the judgment of the learned trial Court.

Brief facts of the case, as recorded by learned first appellate Court in para 2 of its impugned judgment, are that plaintiff Ram Karan in his case alleged that he and other co-sharers were joint owners in possession of the suit land measuring 20 kanal 15 marla and as per mutual partition, he was in possession over the land bearing khasra No.99 (1-14) and khasra No.100 (0-14)

as owner and had constructed houses as shown in the site plan with blue colour. He pleaded that there existed ventilators on the remaining land towards khasra No.101 in the open side and 1½ feet sap and remaining khasra No.100 was vacant wherein Neem and other trees existed. Plaintiff alleged that no other person had got any concern with the land owned and possessed by him shown with blue and red colour in the site plan but defendant, whose khasra No.101 existed towards southern side of his land, forcibly wanted to encroach upon the land owned by him and to dispossess him.

Defendant was served. He appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for permanent injunction for restraining the defendant from interfering into the peaceful possession of plaintiff in khasra No.99 (1-14) and 100 (0-14) mentioned in para No.2 of the plaint and for restraining defendant from forcibly taking possession and from doing construction over the suit property? OPP
2. Whether the suit of the plaintiff is not maintainable and plaintiff has no cause of action and locus standi to file the present suit? OPD
3. Relief

Both the parties led their documentary as well as oral evidence, in support of their respective stands taken in the pleadings. After appreciation of the evidence and hearing learned counsel for the parties, learned trial Court

dismissed the suit of the plaintiff vide its impugned judgment and decree dated 27.01.2014. Plaintiff felt aggrieved and filed his first appeal, but the same was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 12.08.2015. Hence this regular second appeal at the hands of the unsuccessful plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that plaintiff-appellant filed a suit for permanent injunction. His entire case was based on an alleged family partition in the year 1965. However, neither the plaintiff produced on record any such document, which may even remotely suggest that family partition, as a matter of fact, took place in the year 1965 nor any such family partition came to be recorded in the revenue record. Further, when the plaintiff-appellant appeared as PW2, he admitted that defendant constructed his house many years ago and the suit property was in possession of the defendant. Once it was so admitted by the plaintiff himself, he would have no case either on facts or in law, it being a suit for injunction. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

It was the own pleaded and argued case on behalf of the plaintiff-appellant that both the parties to the litigation were co-sharers. As noticed hereinabove, plaintiff could not prove the family partition nor it was so recorded in the revenue record. He also admitted that the defendant was in possession over the suit property. Dispute was pertaining to the land in khasra No.99 and 100. Demarcation was carried out by DW2 Ramesh Chand, Field Kanungo at the instance of defendant-respondent Braham Parkash. The

demarcation report Ex.DW2/A was duly proved on record, which also falsifies the case of the plaintiff. Similarly, Local Commissioner was appointed and he was PW4 Ramesh Chander, who also proved his demarcation report Ex.PW4/C.

Even this second demarcation report Ex.PW4/C was also not in favour of the plaintiff-appellant. Site plan Ex.PW4/D also could not prove the case of the plaintiff-appellant. The only way left out with the plaintiff-appellant was to seek separate possession by way of partition. That is what was held by the learned Courts below. Under these circumstances, it can be safely concluded 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, for this reason also.

Exceptions apart, one co-sharer shall not be entitled for injunction against another co-sharer, unless the co-sharer seeking injunction establishes his absolute, long, settled and exclusive possession. So far as the present case is concerned, plaintiff-appellant himself has admitted the possession of the defendant over the land in dispute. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

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 para 23 of the impugned judgment, which deserve to be noticed here, read as under: -

“The LC report Ex.PW4/C if showing construction of latrine and

wall over southern doll of khasra No.99 and 100, but these khasra numbers are not established to be exclusively owned by plaintiff and defendant being a co-sharer in the entire joint holding has a right in the entire land till partition. The disputed khasra numbers cannot be said to be under exclusive ownership and possession of plaintiff when any mutual partition is not reflected in the revenue record and the land is continuing as joint land and thus the remedy available to plaintiff is to seek partition of the joint holding including khasra No.99 and 100. Further, as per evidence on record, the construction of plaintiff is admitted to be old construction and plaintiff in his affidavit Ex.PW2/A has prayed for completing the area of his khasra No.99 and 100 and also of the passage bearing khasra No.95. Such relief can only be granted in partition proceedings. In view of entire discussion no relief of permanent injunction can be granted to plaintiff and therefore, learned trial court may be on different reasoning has rightly held that plaintiff is not entitled to the relief prayed by him in the suit. The findings recorded by learned trial court are thus upheld and the same are hereby affirmed.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the impugned judgments and decrees. 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 present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it 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