

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

252

RSA-5448-2015

Date of Decision:01.05.2017

Sukhdev Singh

.....Appellant

Versus

Chiman Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Umesh Kumar Kanwar, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by the learned Courts below, whereby learned Additional District Judge vide his impugned judgment and decree dated 12.02.2015 dismissed his first appeal, upholding the impugned judgment and decree dated 19.12.2013 of the learned trial Court, dismissing the suit of the plaintiff-appellant, for permanent injunction.

Brief facts of the case, as noticed by the learned first appellate Court in para 4 of its impugned judgment, are that the appellant-plaintiff filed this suit seeking decree for permanent injunction restraining the defendants/respondents from causing any sort of interference into possession of the plaintiff or otherwise dispossessing the plaintiff illegally, forcibly and without due course of law from the suit land measuring 18 kanals 05 marlas as fully described in head note of the plaint alleging that he had been coming into peaceful cultivating possession of same from the

last many years continuously as an unauthorized tenant under the provincial

Govt. It was alleged that the defendants had no concern whatsoever either with the ownership or possession of the suit land but they were adamant to dispossess the plaintiff therefrom illegally and forcibly and they actually tried to do so a day before institution of this suit but their abortive attempt was foiled by the plaintiff with the help of others but they left the spot leaving threat for dispossessing the plaintiff from the suit land as and when they find opportunity.

Having been served in the suit filed by the plaintiff for permanent injunction, defendant Nos.2 and 5 appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.*
- 2. Whether the plaintiff has no cause of action or locus standi whatsoever to file the present suit? OPD.*
- 3. Whether the plaintiff has not approached the Court with clean hands? OPD.*
- 4. Whether the instant suit of plaintiff is counter blast to the earlier suit filed by the defendant titled as Dayalo Bai Vs. Resham Singh etc. ? OPD.*
- 5. Relief.”*

With a view to substantiate their respective pleaded case, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has failed to establish his lawful possession over the suit land.

Accordingly, suit for permanent injunction filed by the plaintiff-appellant

was dismissed by the learned trial Court vide its impugned judgment and

decree dated 19.12.2013. Feeling aggrieved, plaintiff filed his first appeal which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 12.02.2015. Hence, this regular second appeal, at the hands of the plaintiff.

Heard learned counsel for the appellant.

It is a matter of fact and not in dispute that true owner of the suit land was the provincial Government. Entry in the relevant revenue record about the possession over the suit land was recorded in the name of one Resham Singh. Under Section 44 of the Punjab Land Revenue Act, presumption of truth is attached to the revenue entries. No doubt, presumption attached to the revenue entries would always be rebuttable, however, in the present case, plaintiff-appellant failed to rebut said presumption attached to the revenue entries because he did not lead any such evidence.

Once the plaintiff could not establish his cultivating possession over the suit land, he was bound to fail in his suit for permanent injunction. That is what has been held by both the learned Courts below by recording concurrent findings of facts. 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.

Appellant-plaintiff claimed to have come in possession only on the basis of an affidavit allegedly executed by Resham Singh in favour of the appellant. However, the affidavit allegedly executed by Resham Singh was also strongly opposed by defendant No.5-Smt. Dayalo Bai, who proved before the Court that Sh. Resham Singh was not having sound disposing

mind. He never cultivated the suit land in any capacity. It was further deposed that Sh. Resham Singh was residing with defendant No.5 as he was brother of the husband of defendant No.5. It was also claimed by defendant No.5 that, as a matter of fact, she was in actual cultivating possession of the suit land and not the plaintiff-appellant.

In this view of the matter, learned Courts below came to the conclusion that the alleged affidavit alone was not sufficient to discard the entries incorporated in the revenue record. Further, even the said affidavit 'mark A' could not be proved by the plaintiff-appellant on record, in accordance with law. Under these peculiar facts and circumstances of the case noticed here-in-above, it can be safely concluded that the learned Courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

It goes without saying that the appellant being the plaintiff, onus was on him to prove his case by leading cogent and convincing evidence. However, he failed to do so for the reason best known to him. Neither he could rebut the revenue entries by leading relevant evidence nor he could prove even the affidavit 'mark A' allegedly executed by Sh. Resham Singh in favour of the appellant. It is also pertinent to note here that the alleged affidavit of Resham Singh was dated 13.09.2010, whereas he died on 18.10.2010.

The appellant also failed to get the abovesaid affidavit recorded in Rapat Roznamcha with the Patwari Halqa, claiming physical possession over the suit land. Appellant-plaintiff was supposed to stand on his own legs. In the absence of sufficient material on record to establish his

cultivating possession over the suit land, appellant was bound to fail. That is what has been held by both the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. The relevant and cogent findings of facts recorded by learned Additional District Judge in Para 12 of his impugned judgment, which deserve to be noticed here, read as under:-

“As in this case the revenue record itself produced by the plaintiff reveals that the Provincial Government is the owner of the suit land and name of Resham Singh is recorded in the column of cultivation as an unauthorized occupant as per jamabandi for the year 2007-2008 Ex.P1, and Khasra girdawri Ex.P2 for the crop Sauni 2009 Harri 2010 further reflects the same position. As per death certificate Ex.P3, Resham Singh in whose name the revenue record stands expired on 18.10.2010. The case of the plaintiff is that before his death, Resham Singh, executed an affidavit in his favour and transferred the possession of the same. On the other hand, Dayalo Bai defendant set up a case that Resham Singh was not having proper sound disposing mind, so he never cultivated the land in any capacity. He was residing with defendant no.5 as he is brother of husband of defendant no.5 and defendant no.5 was in possession of the suit land in actual. The learned Lower court has rightly come to the conclusion that the affidavit is not sufficient to discard the entries incorporated in the revenue record. Presumption of truth is attached to the entries of the jamabandi although the same is rebuttable but the possession of the deceased Resham Singh cannot be discarded by the court merely on the basis of affidavit mark A alleged to be executed by Resham Singh in favour of the plaintiff. Even otherwise, the

marked document is not admissible in evidence. Moreover, the above said affidavit is alleged to be executed by deceased Resham Singh on 13.9.2010 to transfer the possession in favour of the plaintiff whereas he has died on 18.10.2010 but the plaintiff has not got entered the affidavit in the record of the Halqa Patwari regarding the change of possession. If Resham Singh has executed the above said affidavit in his favour, the plaintiff might got the same entered in the Roznamcha of the Patwari Halqa concerned. As such the plaintiff has failed to rebut the presumption of jamabandi and khasra girdawri which shows the possession of Resham Singh of the said land. Therefore, the appellant/plaintiff has failed to prove his possession over the suit land and as such considering all the facts and circumstances of the case, this court come to the conclusion that there is no illegality in the findings returned by the learned Trial court resultantly dismissing the suit as the same are neither erroneous nor illegal and the same are therefore, affirmed.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the abovesaid findings recorded by the learned Additional District Judge, whereby he rightly upheld the impugned judgment and decree dated 19.12.2013 passed by the learned trial Court. He also failed to refer any question of law much less substantial question of law, 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. Learned Courts below recorded concurrent findings of facts which have been found based on sound reasons and the same deserve to be upheld. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini**

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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

May 01, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No