

RSA No. 6128 of 2015 (O&M)

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

**RSA No. 6128 of 2015 (O&M)
Date of Decision: 19.9.2017**

Piara Lal

.....Appellant

Vs.

Suresh Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Abhishek Arora, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of unsuccessful plaintiff, is directed against the impugned judgment of reversal dated 25.11.2013 passed by the learned first appellate court, whereby first appeal of the defendant-counter claimant was allowed, setting aside the judgment and decree dated 13.3.2013 passed by the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 4 and 5 of the impugned judgment, are that plaintiff examined himself as PW1. He also examined Kirdu Singh son of Gurdev Singh as PW2. In his evidence, plaintiff tendered copy of the jamabandi for the year 2001-02 as Ex.P1, copy of the order of Assistant Collector Grade 2nd Class, Bareta as ExP2, copy of jamabandi for the year 2000-01 as Ex.P3. Thereafter, plaintiff made a statement on 19.3.2010 that he did not want to proceed with the suit and withdrew the same. On the basis of this statement, the suit was ordered to be dismissed as withdrawn.

The case of the counter-claimant, in brief, was that

he was owner in possession of 02 kanals of land comprised in khasra No. 204//2/2/1 (2-0) situated in the area of village Kulrian on the basis of registered sale deed No. 915 dated 9.8.2004. The abovesaid land was purchased by defendant from Parkash Chand for a sum of ₹44,000/-. Possession was delivered at that time. Mutation No. 10337 was sanctioned, vide orders of AC 1st Grade, Budhlada, dated 8.2.2005. Said Parkash Chand had purchased the abovesaid land from co-sharer Nasib Chand son of Santu Ram vide sale deed dated 12.6.1986. Mutation of which was sanctioned vide mutation No. 9190 dated 30.1.1987. Till 9.8.2004, Parkash Chand remained owner in possession of the disputed land and thereafter, defendant became owner in possession of the suit land on the basis of sale deed dated 9.8.2004 but under the garb of suit, plaintiff illegally and forcibly dispossessed the defendant from the suit land. The abovesaid killa number was sold by predecessor-in-interest of plaintiff in favour of Parkash Chand who later on sold it to defendant. In this way, plaintiff was not having any right to be in possession of the suit land rather defendant, on the basis of ownership, was entitled for the possession of the same. Defendant requested plaintiff many a times to handover the possession but plaintiff did not pay any heed to it. Therefore, defendant filed his counter-claim.

The cause of action arose to the defendant as plaintiff had taken illegal possession and refuse to handover the same. The counter-claim was within limitation. It was further averred in the counter-claim that plaintiff concealed the material facts from the court. He concealed the factum of sale deed dated 12.6.1986 and 9.8.2004. In fact, Naib Chand was uncle (Chacha) of plaintiff. His property was inherited by plaintiff. On the basis of sale deed, entries in revenue record were in favour of Parkash Chand since 30.1.1987. It

was further averred that plaintiff never remained in exclusive possession of the suit property. When the mutation of inheritance of Nasib Chand was sanctioned in favour of plaintiff, at that time also, Parkash Chand was in possession of the suit property. During the pendency of the suit, plaintiff forcibly took possession of the suit property. Parkash Chand left village Kulrian and went to Chandigarh. Similarly, defendant was residing at Bareta. Taking undue advantage of this, plaintiff made a wrong statement and got the order dated 27.10.2004 passed in his favour. At that time, he was not in possession of the suit property. In the end, it was prayed that counter-claim filed by the defendants be allowed.

Having been put to notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. He also filed a counter-claim. Plaintiff filed reply to the counter-claim filed by the defendant. However, since, as noticed hereinabove, plaintiff withdrew his suit, the learned first appellate court re-framed the issues and the same read as under:-

1. Whether the counter claimant is entitled to possession of the suit property? OPCC
2. Whether the respondent in counter-claim is estopped by his own act and conduct? OPR
3. Whether the counter-claimant has no right to file the counter-claim? OPR
4. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. However, during the pendency of the suit, plaintiff-respondent made a statement before the learned trial court on 19.3.2010 that he did not want to proceed further with his suit and sought permission to withdraw the same. Permission was granted and suit was ordered to be dismissed as withdrawn.

Thus, only counter claim filed by the defendant-counter claimant remained to be decided, which came to be dismissed by the learned trial court, vide its judgment and decree dated 13.3.2013. Defendant-counter claimant felt aggrieved and filed his first appeal, which was allowed by the learned first appellate court, vide its impugned judgment and decree dated 25.11.2013. Hence this regular second appeal at the hands of plaintiff.

Heard learned counsel for the plaintiff-appellant.

The only argument raised by learned counsel for the appellant was that sale deed Ex.D1 whereby defendant-respondent-Suresh Kumar purchased the suit land was based on fraud and misrepresentation. He also pointed out that plaintiff-appellant was in physical possession over the suit land. However, when he was confronted to refer to any pleading or evidence, so as to prove the plea of fraud raised by the plaintiff-appellant, learned counsel for the appellant had no answer and rightly so, it being a matter of record. In fact, plaintiff-appellant withdrew his suit for the reasons best known to him. So far as possession of the suit land is concerned, it was duly established on record by the counter-claimant vide sale deed dated 12.6.1986 (Ex.D3), whereby vendor delivered the possession to his vendee-Parkash Chand at the time of execution of the sale deed.

Thereafter, plaintiff-appellant himself placed on record jamabandi for the year 2000-01 as Ex.P3 showing exclusive possession of Parkash Chand-predecessor-in-interest of counter-claimant Suresh Kumar over khasra No. 204//2/2/1 measuring 2 kanals. Still further, Parkash Chand executed the sale deed Ex.D1 in favour of defendant-respondent and there was a recital in the sale deed that possession has been delivered to the vendee. Having said that, this Court feels no hesitation to conclude that the plaintiff-appellant miserably failed

to prove his case and he also failed to disprove the case of the counter-claimant.

On the other hand, defendant/counter-claimant duly proved his ownership by way of sale deed Ex.D1 and also his possession over the suit land. Since true import of the cogent and convincing evidence could not be appreciated by the learned trial court in correct perspective, the learned Additional District Judge rightly set aside the patently illegal findings recorded by the learned trial court, by allowing first appeal of the counter-claimant/defendant-respondent, vide impugned judgment dated 25.11.2013 and the same deserves to be upheld.

It is the settled proposition of law that plea of fraud is to be proved like a criminal charge. In fact, it is very easy to raise the plea of fraud but it is equally difficult to prove it. In the case in hand, appellant proceeded on a very casual approach, while raising the plea of fraud and thereafter, made no efforts to prove the same. In such a situation, he was bound to fail. That is what has been held by the learned first appellate court, while recording its cogent and convincing findings, leaving hardly any scope at the hands of this Court to interfere in the impugned judgment and decree. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing its impugned judgment and decree and the same deserve to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85** and judgments of this Court in **Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520, Devi Lal Vs. Shekaran and another, 2011 (5) RCR (Civil) 615, Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813, M/s Machhi Ram Kishan Singh**

Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506, RSA No.4070 of 2016 (Chamkur Singh and another Vs. Raghbir Singh and another) decided on 13.1.2017 and RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.1.2017.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 19 to 20 of its impugned judgment, which deserve to be noticed here, read as under:-

“Faced with this situation, where counter claimant has been shown as owner in the revenue record and where revenue record and sale deed reveal that Parkash Chand predecessor in interest of appellant-counter claimant came in possession of the suit property, this court is of the considered opinion that appellant-counter claimant is entitled for the possession of the suit property on the basis of ownership.

Looking from another angle also appellant-defendant counter claimant has been able to prove on record that after coming in possession of the suit property on the basis of ownership, he was dispossessed by the respondent-plaintiff during the pendency of the suit filed by plaintiff-respondent. He has specifically pleaded in his counter-claim that plaintiff-respondent taking benefit of stay order passed in this case, dispossessed him illegally from the suit property. Similar version has been stated by appellant-defendant-counter claimant while appearing in the witness box as DW1. Ld. Lower court has wrongly observed that the period of alleged dispossession of appellant-defendant counter claimant has not been mentioned. Even jamabandi for the year 2005-06 proved on record as Ex.D9 shows the status of Piara Lal in the column of possession as Gair Marsui. It has been held by

our own Punjab and Haryana High Court in Karan Singh and others Vs. Raj Pal and others, as reported in 2012 (2) Civil Court cases 734 that entry in the revenue record depicting possession of occupant as gair marusi does not imply that possession in as tenant. Expression gair marusi as recorded in revenue record when proper capacity of occupant is not known to revenue official. In the present case also, the proper capacity of plaintiff/respondent is now known and, therefore, he has been recorded in the column of possession as Gair Marusi. All this leads to the only inference that plaintiff/respondent Piara Lal is in illegal possession on the suit property. Learned lower court has wrongly held that jamabandi as Ex.D9 is incorrect. It is pertinent to mention here that it was never the case of either of the parties that Jamabandi Ex.D9 is incorrect. None of the parties has challenged the entries in this jamabandi. Where the name of the vendee who has purchased the specific khasra number is shown separately in the succeeding jamabandi there cannot be said to be nay error regarding the said entry in the said jamabandi. As already discussed above appellant-defendant-counter claimant has been proved to be exclusive owner of the disputed khasra number. Merely because the jamabandi indicates the appellant-counter claimant as exclusive owner to the suit land, the relief of possession cannot be denied to him. Since he is exclusive owner of the disputed khasa number, he cannot be directed to seek partition of the property as has been observed by learned lower court.. The appellant-defendant counter-claim has got the right in claim exclusive possession of the suit property.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in abovesaid cogent findings recorded 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 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 law laid down by 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**.

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.

Since the appeal itself has been dismissed on merits and applicant-appellant also failed to furnish any plausible explanation in his applications for condonation of delay of 269 days in filing and 245 days in re-filing the appeal, the same are also dismissed.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

19.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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