

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 1208 of 2017 (O&M)
Date of Decision: 03.3.2017

Prem Kumar and others

.....Appellants

Versus

Ajay Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepak Girotra, Advocate
for the appellant.

ANITA CHAUDHRY, J

CM-2886-C-2017

Application is allowed for the reasons stated therein.

Delay of 29 days in re-filing the appeal is condoned.

RSA-1208-2017 (O&M)

This is the plaintiffs' appeal against the dismissal of the suit and the appeal.

The plaintiffs approached the Court with the plea that their father Ram Dhari son of Shib Lal was in possession of 5 kanals 6 marlas of land in village Lakhan Majra. Ram Dhari died in November 2009 and after his death, their possession was continuous. It was claimed that defendant No. 1 was proclaiming that they were owners of the property on the basis of a sale deed dated 25.2.2010 allegedly executed by Mange Ram son of Mohan Lal and Chotu son of Harnand to the extent of the share recorded therein and defendants No. 2 and 3 were witnesses to the sale. It was

pleaded that the sale deed was illegal, void and did not affect their rights as

it was obtained by fraud and impersonation and Mange Ram and Chotu did not execute any sale deed and some fictitious persons had been produced in place of Mange Ram and Chotu and defendants No. 2 and 3 had falsely identified them. It was pleaded that the original owner had died long ago and Mange Ram and Chotu were not the owners. It was pleaded that they were in continuous possession as *gair morusi* and a wrong fact had been recorded in the sale deed that possession had been handed over. A decree for declaration was prayed for that the sale deed in favour of defendant No. 1 was illegal and void.

In a joint written statement filed by the defendants, several preliminary objections were raised and it was pleaded that defendant No. 1 had purchased half share of the suit land from Mange Ram vide sale deed dated 25.2.2010 and possession had been delivered. It was also pleaded that the plaintiffs were not the legal heirs of Ram Dhari and they were the legal heirs of Ram Bihari. Their possession was also denied.

On the pleadings of the parties, following issues were framed by the trial Court:-

1. *Whether the sale deed dated 25.2.2010 is liable to be set aside as alleged ? OPP*
2. *If the above issue is proved in affirmative, the mutation and subsequent record based upon the impugned sale deed is liable to be set aside as alleged ? OPP*
3. *Whether the plaintiffs are entitled for consequences relief of permanent injunction restraining the defendant No. 1 from interfering in the possession of the plaintiffs over the suit land and from further alienating the suit land detailed in para no. 1 ? OPP*
4. *Whether the present suit is not maintainable? OPD*
5. *Whether the suit is liable to be dismissed with special*

costs ? OPD

6. Relief.

No objection was taken to the framing of issue and onus of issue No. 1 was placed upon the plaintiffs. Plaintiffs examined a Head Constable, a registration Clerk besides the plaintiff. Some documents were tendered in evidence.

The defendants examined Ajay Kumar DW-1 and one more witness besides tendering the *jamabandis*, mutation and the copy of the *aksh-sijra*.

The trial Court decided issue Nos. 1 to 3 against the plaintiffs.

Para 12 of the judgment of the trial Court reads as under:-

“Although, plaintiffs have no right to challenge sale-deed Exhibit P2 but if they are in possession of land in dispute as Gair Marusi, they have every right to protect their possession against forcible dispossession. To prove their possession, plaintiff No. 3 appeared as PW3 and tendered his affidavit Exhibit PW2/A and plaintiff No. 2 appeared as PW-4 and tendered affidavit Exhibit PW4/A in which they reiterated the averments made in the plaint on oath. They also stated that Ram Dhari and Ram Bihari is one and the same person and plaintiffs are his legal heirs. They also stated that in the ration card plaintiffs No. 1 to 4 are shown as son of Ram Dhari and Ram Dhari also executed the Will in favour of plaintiffs and name of Ram Dhari was wrongly incorporated as Ram Bihari in the revenue record. However, except self serving statement of plaintiff no. 3 appearing as PW3 and plaintiff No. 2 appearing as PW4, there is no evidence on the file to prove that plaintiffs are legal heirs of Ram Dhari son of Shiv Dayal son of Shadi who has been recorded in possession of land in dispute as Gair Marusi. Plaintiffs have placed on file photo copy of voter card Mark B, death certificate of Ram Dhari son of Shiv Lal as Mark C, copy of ration card as Mark D and copy

of sale deed dated 30.4.2007 as Mark E but these documents have not been duly proved on the file and cannot be relied upon to prove that plaintiffs are legal heirs of Ram Dhari son of Shiv Lal son of Shadi. Plaintiffs have not examined even a single witness from the village where suit land is situated to prove that plaintiffs are legal heirs of Ram Dhari son of Shiv Lal son of Shadi and Ram Dhari son of Shiv Lal and Ram Bihari was the same person. On the other hand, defendants have placed on file sale deed dated 13.5.2003 bearing Vasika no. 241 Exhibit D1 vide which Ram Bihari son of Shiv Lal son of Sheo Chand sold his land at village Lakhan Majra in favour of Satpal son of Santu regarding which mutation No. 3842 Exhibit D5 was also sanctioned and from these documents it is evident that plaintiffs are legal heirs of Ram Bihar son of Shiv Lal son of Sheo Chand and once plaintiffs fail to prove that Ram Bihar son of Shiv Lal son of Shiv Chand and Ram Dhari son of Shiv Lal son of Shadi was the same person, plaintiffs cannot claim themselves to be in possession of land in dispute. Defendants have also placed on file mutation No. 4969 Exhibit D1 vide which mutation of inheritance of Ram Bihari son of Shiv Lal son of Shiv Lal son of Shiv Chand was sanctioned in favour of present plaintiffs. Said mutation was sanctioned on 28.10.2011 i.e. during the pendency of the present suit and plaintiffs have not placed on file any evidence to prove that they had raised any objection before the concerned revenue official that they are son of Ram Dhari son of Shiv Lal son of Shadi. As stated above, Ram Bihari son of Shiv Lal son of Shiv Chand in his life time has executed sale-deed Exhibit D1 in the year 2003 and as per the case of the plaintiffs he died in the year 2010 and in the said seven years said Ram Bihar never made any effort to correct the revenue entries if his name was wrongly recorded in the revenue record. It is well settled law that in a Civil case disputed fact is to be decided on the basis of preponderance of probability and in the present case from the documentary evidence placed on file by the defendants as

discussed above it is proved on the file that plaintiffs were not the legal heirs of Ram Dhari son of Shiv Lal son of Shadi and thus plaintiffs also fail to prove that they are in possession of land in dispute as Gair Marusi.”

Based on the findings recorded on issue Nos. 1 to 3, the suit was dismissed.

Aggrieved by the judgment, an appeal was preferred.

The Appellate Court reversed the findings so far as the identity of Ram Dhari and Ram Bihari was concerned and it was held that Ram Bihari and Ram Dhari were the same person. It was held that the plaintiffs had no right to challenge the sale deed and they had not been able to prove that the sale deed had been obtained through impersonation. The Appeal was partly allowed and the defendants were restrained from interfering in the possession of the plaintiffs since they were found to be in possession of the property.

Counsel for the appellants submits that onus of issue No. 1 was wrongly placed upon the plaintiffs and they could not be asked to prove in the negative. It was urged that the sale deed had been obtained by impersonation and they were entitled to maintain their possession as the respondent did not lead any evidence to prove his title.

The plaintiffs had approached the Court with a plea asserting his possession and were disputing the sale in favour of defendant No. 1. They had raised a plea that the sale deed had been obtained by impersonation and Mange Ram and Chotu, the previous owners, had not got the sale deed registered. The onus of the issue was placed upon the plaintiffs. They had failed to lead any evidence nor they summoned Mange Ram or Chotu. The plaintiff had got a FIR lodged but the fate of that case

was not brought to the notice of the Court. The plaintiffs did not examine any hand writing expert to get the signatures/thumb impressions compared.

It was disclosed during the submissions that the vendee had filed a suit for possession. The owners have already approached the Court and were seeking possession in due course of law.

I find no infirmity in the findings recorded by the Courts below. The findings of the Appellate Court are affirmed.

The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

March 03, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No