

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4830 of 2014 (O&M)
Date of decision: 01.09.2017

Balbir Singh

... Appellant

Vs.

Sarwan Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for permanent injunction was dismissed and counter-claim of the defendant was partly decreed by the learned trial Court vide its common impugned judgment and decree dated 22.04.2010 and first appeal of the plaintiff was also dismissed by the learned Additional District Judge vide his impugned judgment and decree dated 31.07.2013, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of the impugned judgment, are that plaintiff had brought a civil suit for grant of permanent injunction restraining the defendant from demolishing or

interfering in any manner in the peaceful possession of the plaintiff over the house as detailed in the head note of the plaint, on the allegations that he was joint owner of the land depicted in the revenue record and constructed the house, cattle shed, shop and had installed a hand pump about five years ago in his hand and had his residential possession over the house and his possession was over a bit less area than his due share in the land in question. He further alleged that he raised the construction in presence of the defendant and was in the knowledge of the defendant and defendant was in possession over the remaining part of the suit land to the extent of his share and defendant has no concern with the above referred construction raised by the plaintiff. He further alleged that the value of the construction of the house etc. was more than 15 lacs. The defendant was alleged to be head strong person and he had no respect for law and threatened the plaintiff to dispossess him from the house and other construction unlawfully and forcibly. Plaintiff requested the defendant to admit his claim and not to act unlawfully and forcibly but he refused.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. Further, defendant also filed his counter-claim. Replication was filed by the plaintiff to the written statement filed by the defendant and the plaintiff also filed his reply to the counter-claim. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
2. Whether the plaintiff has no locus standi to file the present suit?
OPD

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the defendant is entitled for possession of the land measuring 0K-15 marlas as prayed in the counter claim after removal of superstructure? OPD
5. Whether the counter claim of the defendant is not properly valued for the purpose of court fee and jurisdiction? OPP
6. Whether the defendant is estopped from filing the counter claim by his own act and conduct? OPP
7. Whether the defendant has no locus standi to file the present counter claim? OPP
8. 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. After hearing 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 prove his pleaded case for want of cogent and convincing evidence, whereas the defendant has proved his stand taken in the counter-claim.

Accordingly, suit for permanent injunction filed by the plaintiff was dismissed and the counter-claim of the defendant was partly decreed by the learned trial Court vide its common impugned judgment and decree dated 22.04.2010. Feeling aggrieved, plaintiff filed only one first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 31.07.2013. Hence this regular second appeal at the

hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that the plaintiff-appellant failed to establish his possession over the suit land. Once he was unable to bring on record any cogent and convincing evidence, so as to establish his possession on the disputed property, his suit for permanent injunction was bound to fail. That is what has been held by both the learned Courts below. On the other hand, defendant successfully proved his stand taken in the counter-claim. This was the reason that the counter-claim was partly decreed, directing the plaintiff to hand over the possession of khasra No.28//6/4 (0K-15M) to the defendant. 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.

Once counter-claim of the defendant was partly decreed by the learned trial Court, plaintiff was bound to file two separate first appeals, if he was really feeling aggrieved against the common impugned judgment and decree of the learned trial, whereby his suit for permanent injunction was dismissed and counter-claim of the defendant was partly decreed. However, plaintiff filed only one appeal, for the reasons best known to him. Similarly, only one regular second appeal has been filed before this Court at the hands of plaintiff.

Thus, it goes without saying that the decree passed by the learned trial Court in the counter-claim has gone unchallenged and the same has already attained finality against the appellant. In such a situation, plaintiff was bound to fail. He was rightly non-suited by both the learned Courts below. Under these

circumstances of the case, 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.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in para 17 of the impugned judgment, which deserve to be noticed here, read as under: -

“It is worthwhile to mention here that in the present case the plaintiff has not examined any attesting witness to formally prove the exchange deed dated 8.6.01. Talwinder Singh attorney of the plaintiff also failed to prove the exchange deed while appearing into witness box as PW1. Thus in the present case the plaintiff has failed to prove the exchange deed dated 8.6.01 and as such the plaintiff cannot be held to be owner of land measuring 15 marlas for which the defendant has preferred the counter claim. The evidence adduced on record by the defendant is cogent and consistent so far as his counter claim is concerned. After partition of suit land the defendant is shown to be exclusive owner in possession of land measuring 15 marlas comprised in khasra No.28R/6/4 as per jamabandi for the year 1998-99 Ex.D3 which was issued by the concerned Patwari on 13.6.01. As such the learned lower Court has rightly decreed the counter claim of the defendant for possession of land measuring 15 marlas as detailed and described in the counter claim.

Keeping in view the above discussion, this Court is of the considered opinion that the plaintiff has miserably failed to prove his possession over the suit land and thus, the learned lower Court has rightly dismissed the suit of the plaintiff and declined the relief of permanent injunction. As discussed above, the disputed land was given to the defendant in a partition suit and upon filing of execution of the said partition order, symbolic possession of the disputed land has already been delivered to defendant Sarwan Kumar by the court orders and mutation has also been sanctioned in favour of defendant Sarwan Kumar, thus the learned lower Court has rightly decreed counter claim of the defendant and no interference is called for in the well reasoned judgment of the learned lower Court.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to raise 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. 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 since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. Present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, 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.

01.09.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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