

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1980 of 2017 (O&M)
Date of decision: 11.08.2017

Umrao Singh and others

... Appellants

Vs.

Joginder Kumar Monga

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Tarundeep Kumar, Advocate for
Mr. D.S. Pheruman, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Plaintiffs are in regular second appeal, in a suit for permanent injunction restraining the defendant-respondent from interfering into their lawful and peaceful possession or alienating the suit property in any manner. Both the learned Courts below recorded their concurrent findings of facts dismissing the suit of the plaintiffs-appellants.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that before the learned trial Court, the plaintiffs-appellants had filed a suit against the defendant for permanent injunction restraining the defendant, his agents, supporters, privies agents etc., from interfering into the lawful and peaceful possession of the plaintiffs or alienating in any manner the measuring 349.34 sq.yards length 76 ft.9 inch and width 41 ft, bounded as East Road 40 ft wide, West ownership of others, south

Street 20 ft wide, North property of others bearing khasra No.2390/843 min situated in the area of Tung Bala Urban, Abadi Medical Enclave, Amritsar, on the averments that the suit property was owned by Iqbal Kaur who sold the same to plaintiff No.1 and Parminder Singh (since deceased now represented by plaintiff No.2 to 5) vide registered sale deed dated 07.10.1993. The plaintiffs were put in actual possession. Mutation No.9037 was entered in favour of plaintiffs. The plaintiffs constructed a boundary wall and a room. They were in continuous possession over the suit property. A different suit pertaining to the suit property is pending consideration in which Hon'ble High Court has granted status quo order. The defendant was alleging a sale deed in his favour. The defendant had no right, title or interest in the suit property. The defendant was an influential person and was threatening to take forcible possession of the suit property. On the basis of the aforementioned pleadings, the present suit had been filed.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. Defendant also filed his counter-claim for permanent injunction restraining the plaintiffs from interfering into the peaceful possession of the defendant over the suit property. Plaintiffs filed their replication to the written statement and reply to the counter-claim of the defendant. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPA.
2. Whether the suit is not legally maintainable in the present form? OPD.

3. Whether the plaintiff has no locus standi to file the present suit? OPD.
4. Whether the counter claimant is entitled for the relief of permanent injunction as prayed for in the counter claim? OPCC.
5. Whether the counter claim filed by the counter claimant is legally not maintainable under the law? OPR.
6. Whether the counter claimant has got no cause of action to file the present counter claim? OPR.
7. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that plaintiffs have failed to prove their case and defendant also failed to prove his counter-claim. Accordingly, suit of the plaintiffs as well as the counter-claim of the defendant were dismissed by the learned trial Court vide its common impugned judgment and decree dated 27.07.2015.

Plaintiffs filed their first appeal. During pendency of the appeal, plaintiffs also moved an application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, seeking amendment in their plaint, with a view to incorporate their additional plea that they were illegally and forcibly dispossessed by the defendant, during pendency of the suit, so as to make an additional prayer for suit for possession. However, the learned first appellate Court dismissed the application for amendment moved by the plaintiffs as well

as their first appeal vide impugned judgment and decree dated 29.11.2016. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

There was voluminous documentary as well as oral evidence available on record to establish that plaintiffs were not in possession over the suit property, before filing the suit for permanent injunction. In fact, it was plaintiff No.1 Umrao Singh, who appeared as PW1 and admitted that a house was constructed on khasra No.2390/843. He also admitted that they were not in possession and there was no cause of action mentioned in the head note of the plaint regarding forcible dispossession.

As per Mark X, Umrao Singh made a complaint to the police saying that there was stay regarding possession in their favour. Inquiry was conducted by the concerned officials of the police department and it was found that plaintiffs were not in possession but somebody else was in possession. There was a name plate on the suit property bearing J.L. Monga. In this view of the matter, it can be safely concluded that it was the plaintiff-appellant No.1 Umrao Singh who himself demolished the case of the plaintiffs completely. Under these undisputed facts and 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.

No site plan was placed on record by the plaintiffs. Plaintiffs also failed to prove their possession over the suit property. When field inspection was carried out by the revenue authorities, they also found that plaintiffs were not in possession. Revenue document Ex.P3-Jamabandi also does not show the

possession of the plaintiffs. 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, for this reason also.

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 paras 17 and 18 of the impugned judgment, which deserve to be noticed here, read as under: -

“After hearing ld. counsel for the parties and going through the file, this court is of the considered opinion that in the present case, plaintiff/appellants have filed suit for permanent injunction restraining the defendant not to interfere with the possession in the dimensions mentioned in the head note of the plaint, which was purchased by them on 07.10.1993 and mutation was sanctioned in their name bearing no.9037. Now they have apprehension in the hands of defendant for their dispossession. On the other hand defendant claimed that property is different than the said property purchased by them on 07.10.1993 and dimensions are different and there is no concern with the property of the appellants. In order to prove their case, the plaintiff no.1 itself appeared as PW1 through his duly sworn affidavit Ex.PW1/A, the plaintiff got examined PW2 Nirmal Kaur through her duly sworn affidavit PW2/A, PW3 Arvind Kumar, Deed Writer through his duly sworn

affidavit Ex.PW3/A, PW4 Harinder Kaur, Steno and the plaintiff tendered in evidence documents certified copy of judgment dated 11.5.2012 Ex.P1, certified copy of decree sheet Ex.P2, copy of jamabandi Ex.P3, copy of sale deed dated 7.10.1993 Ex.P4, copy of statement and order dated 22.11.2013 Ex.P5, copy of judgment in appeal dated 6.10.2014 Ex.P6 to Ex.P8, copy of decree sheet Ex.P9, copy of report of SDM Ex.PA, copy of complaint filed by the plaintiff Ex.PB, copy of report of Tehsildar Ex.PC, copy of FIR mark A, copy of report of SHO Mark B, copy of report of Tehsildar Mark AX, copy of judgment Mark BX, copy of report of revenue officer Mark C, copy of report of Deputy Commissioner Mark CX, copy of report of SDM Mark D, copy of sale deed dated 7.10.1993 Mark E, copy of complainant Mark Y and the evidence was closed on behalf of the plaintiffs. On the other hand the defendant got examined DW1 Sanjay Khanna through his duly sworn affidavit Ex.DW1/A, DW2 Jatinder Kumar Monga through his duly sworn affidavit as Ex.DW2/A, DW3 Ramesh Kumar Mahajan, DW4 Rajwant Kaur and DW5 Manjit Singh. The defendant tendered into evidence documents copy of sale deed dated 16.3.2011 Ex.P1, photographs Ex.D2 to Ex.D4, jamabandi Ex.D5, site plan Ex.D6, copy of order dated 1.3.2007 Ex.D7, copy of special power of attorney Ex.D8, copy of register entry Ex.D9 and the evidence on behalf of the defendant/ counter claimant was closed by order dated 19.11.2013.

This court is further of the considered opinion that during

the pendency of the case, it is admitted by PW1 that a house was constructed on khasra No.2389/843 and he also admits that they are not in possession and there is no cause of action mentioned in the head note of the plaint regarding forcible dispossession and as per mark X, Umrao Singh made complaint to the Commissioner of Police with stay regarding possession was granted in their favour and this was filed by Umrao Singh and it was held in the enquiry conducted by the concerned official that Umrao Singh was required to be in possession regarding khasra No.2389/843/1, but he is not in possession and somebody else took the possession and name plate bears J.L. Monga. Stay was granted in revision no.3128/2009 on dated 7.10.2009. During the course of arguments, ld. counsel for the appellants also moved application with the prayer that during the pendency of the trial, they were dispossessed and possession was taken by defendant and now by way of amending the plaint, he wants to take the plea that the possession be handed over and application for amendment be allowed. By making this admission, it is clear that appellants are not in possession regarding the property in dispute and this suit become infructuous and in this application, it is not mentioned that when they were dispossessed and by whom they were dispossessed.”

It is the settled proposition of law that appellants being the plaintiffs, onus was on them to prove their case by leading cogent and convincing evidence. However, they miserably failed to prove their pleaded

case. Pleadings alone would not be sufficient to decree the suit. Plaintiffs are supposed to stand on their own legs instead of trying to prove their case on the basis of alleged weakness of the case of defendants. Further, plaintiffs failed to prove their possession over the suit land. In this view of the matter, it is unhesitatingly held that the learned Courts below were well justified in passing their respective impugned judgments and decrees 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 following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***T.K. Mohammed Abubucker (D) through LRs and others Vs. P.S.M. Ahamed Abdul Khader and others, 2009 (14) SCC 224 (SC).***
2. ***V. Srinivasaraju Vs. M/s Bharat Electronics Ltd. and others, 2009 (17) SCC 135 (SC).***
3. ***Sebastiao Luis Fernandes (Dead) through LRs and others Vs. K.V.P. Shastri (Dead) through LRs and others, 2013 (15) SCC 161 (SC).***
4. ***Narinder Chand Mehra Vs. Surinder Chand Mehra, 1999 (3) RCR (Civil) 92 (P&H).***
5. ***Sham Lal Vs. Gurnam Singh, 2008 (1) Law Herald 469 (P&H).***
6. ***Smt. Ramesh Vs. Sheo Narayan and another, 2011 (52) RCR (Civil) 801 (P&H).***
7. ***Joginder Kaur Vs. Gurmej Singh, 2013 (1) RCR (Civil) 583 (P&H).***
8. ***Smt. Javitri Devi Vs. Sanjay Kumar Wasist and others, 2017 (1) L.A.R. 142 (P&H).***

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the concurrent findings recorded by both the learned Courts below. 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 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. The 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.

[RAMESHWAR SINGH MALIK]
JUDGE

11.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No