

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. RSA-2662 of 2017 (O&M)

Bhola Ram(deceased) through his LR
Suresh Kumar GaurAppellant

Versus

Maman Chand and othersRespondents

2. RSA-2735 of 2017 (O&M)

Bhola Ram(deceased) through his LR
Suresh Kumar GaurAppellant

Versus

Maman Chand and othersRespondents

Date of Decision:10.07.2017

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

Present: Mr.Sushil Jain, Advocate,
for the appellant in both the appeals.

RAMESHWAR SINGH MALIK, J.(Oral)

These two identical regular second appeals are being decided together, vide this common order as both the appeals are directed at the hands of the plaintiff against the same impugned judgment and decree dated 01.02.2017 passed by the learned first appellate court. However, for the facility of reference, facts are being culled out from RSA No.2662 of 2017 (Bhola Ram(deceased) through his LR Suresh Kumar Gaur Versus Maman Chand and others).

Plaintiff is aggrieved against the impugned judgments and decrees passed by both the learned courts below, whereby the learned trial Court partly decreed his suit for declaration and permanent injunction,

which was further partly modified by the learned first appellate court vide its impugned judgment and decree dated 01.02.2017.

Brief facts of the case as noticed by the learned first appellate court in para 2 to 4 of its impugned judgment, are that plaintiff-Bhola Ram (since deceased) filed civil suit for declaration to the effect that the entries in the house tax record with regard to the suit properties i.e. properties bearing house tax No.6674 to 6676 as detailed in para No.1(a) and 1(b) of the plaint as shown in red colour in the site plan and situated in Mohalla Baas Sitab Rai, Rewari showing defendant No.1 to be its owner were illegal, null and void and not binding upon his rights and that he was the absolute owner in possession of the suit property and that municipal record to that effect ought to be corrected in his name with a consequential relief of permanent injunction so as to restrain defendants from interfering in his possession over the suit property and from alienating or transferring the suit property in any manner whatsoever.

It was pleaded by the plaintiff that he was owner in possession of the suit property bearing house tax No.6675-6676 by virtue of Will dated 08.11.1990 executed by Shiv Charan Dass son of Parmanand and of the property bearing house tax No.6674 having been inherited by him from his grand mother Brhma Devi widow of Nathu Ram. Brahma Devi died in the year 1958. He became owner in possession of the suit property bearing house tax No.6674 by way of inheritance. The suit property bearing house tax No.6675 and 6676 was purchased by Shiv Charan Dass vide sale deed No.131 dated 28.02.1957 for a consideration amount of ₹26,000/- from Shyam Lal son of Kapoor Chand, the general power of attorney holder of Lala Bhawani Dass Behal, Advocate son of Chunni Lal resident of New

Qutub road, Delhi who was appointed as Receiver as per orders passed by learned Civil Sub Judge, Gurgaon in civil suit titled 'Shiv Narayan vs. Basanto etc.' Shiv Charan Dass executed a Will dated 08.11.1990 in favour of the plaintiff. Thereafter the plaintiff raised the construction over the suit property with the consent of Shiv Charan Dass. The said Will dated 08.11.1990 was executed by Shiv Charan Dass in favour of the plaintiff in his sound deposing mind without any influence or pressure in the presence of its attesting witnesses. Shiv Charan Dass died in the year 1996-97. His wife had pre-deceased him. The suit property bearing house tax No.6674 to 6676 as detailed in paras No.1(a) and 1(b) of the plaint as shown in red colour in the site plan is bounded as under:-

East	:	Gali
West	:	Rasta Sare Aam
North	:	House of Jagdish Prasad
South	:	House of Chaju Ram and rasta

It was further pleaded by the plaintiff that defendants have no right, title or interest in any part of the suit property. Some part of the suit property has been in possession of the tenants inducted by him as shown in the site plan. The defendant No.1 taking benefit of wrong municipal entries in his name want to oust him from the suit property, forcibly and illegally. He also wanted to further alienate and transfer the suit property. In fact defendant No.1 had already transferred some part of the suit property in favour of defendant No.3 vide registered sale deed No.10150 dated 20.03.2007 during the pendency of the present suit.

Defendants were put to notice. They appeared and filed their joint written statement, raising more than one preliminary objections.

Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the entry in house tax record relating to the suit property, as detailed in para no,1(A) and 1(B) of the plaint as shown in red colour in the site plan attached therewith bearing House Tax no.6674 to 6676 in favour of the defendant no.1 is liable to be set aside being wrong, illegal, null and void etc. and not binding on the rights of the plaintiff?OPP*
- 2. Whether plaintiff is entitled to get the entries relating to the suit property in the relevant house tax record corrected in his favour?OPD*
- 3. Whether the defendants are illegally interfering into the peaceful possession and user of the plaintiff over the suit property by way of taking forcibly the possession thereof by claiming themselves to be owner in possession therefore are illegally alienating the same?OPD*
- 4. Whether the plaintiff has no locus standi to file the present suit?OPD*
- 5. Whether the suit is not maintainable in the present form?OPD*
- 6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD*
- 7. Whether the suit is barred by limitation?OPD*
- 8. Whether the plaintiff has no cause of action to file the present suit?OPD*
- 9. Relief.*

The following additional issues were framed vide order dated

27.07.2013:-

- 1A. Whether Shiv Charan executed a Will dated 08.11.1990 in favour of the plaintiff and same is his last Will?OPP*
- 1B. Whether Shiv Charan executed a valid Will on*

11.07.1997 in favour of his son Mam Chand and which is his final Will?OPP”

With a view to substantiate their respective stands taken in their pleadings, both the parties produced on record 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 partly decreed the suit of the plaintiff restraining the defendants from taking possession of the suit property from the plaintiff, except in due course of law, vide its judgment and decree dated 01.10.2013. Both the parties felt aggrieved against the judgment and decree passed by the learned trial Court. Plaintiff-appellant was seeking decretal of his suit in toto whereas defendants were seeking setting aside the above-said judgment and decree passed by the learned trial court. Plaintiff-appellant filed his first appeal whereas the defendants filed their cross-objections. Appeal as well as the cross-objections were decided together by the learned Additional District Judge vide impugned judgment and decree dated 01.02.2017. Judgment and decree passed by the learned trial court were modified protecting the possession of the plaintiff-appellant qua the suit property to the extent which was found in his possession i.e. rooms mark R and R-1 as shown in the site plan Ex.DW4/A. Hence, these two identical regular second appeals, at the hands of the plaintiff.

Heard learned counsel for the appellant in both the appeals.

It is not in dispute that Sh.Shiv Charan Dass was co-sharer in the suit property. He executed a power of attorney dated 21.06.1958 in favour of Bhola Ram-predecessor-in-interest of the present appellant. It was Bhola Ram who was plaintiff and he died during pendency of the suit.

First appeal was filed by present appellant-Suresh Kumar Gaur. Thus, it

becomes clear that plaintiff-Bhola Ram was not owner of the suit property. He filed the suit for declaration and permanent injunction on the basis of Will dated 08.11.1990 allegedly executed in his favour by Sh.Shiv Charan Dass. However, both the learned courts below found this Will to be a forged and fictitious document.

Plaintiff being the propounder of the Will, onus was upon him to dispel all the suspicious circumstances surrounding the Will. He failed to discharge his onus and could not prove the Will in accordance with law. This was the reason that his suit for declaration was dismissed by both the learned courts below. Having said that, this Court feels no hesitation to conclude that in the absence of any material available on record, so as to prove his ownership, plaintiff was only entitled to protect his possession except in due course of law, qua the suit property which was found in his possession. That is what has been held by the learned first appellate court, rightly modifying the decree of the learned trial court. It can be safely concluded that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

There is no denying the fact that in the normal circumstances, possession goes with the title of the suit property. However, in the case in hand, possession of the plaintiff-appellant on two rooms mark R and R-1 in the site plan Ex.DW4/A has been found established in favour of the appellant. That is how he was found entitled to protect his possession but only to the limited extent i.e. rooms mark R and R-1 as depicted in the site plan Ex.DW4/A. Beyond this part of the suit property, neither the appellant-plaintiff has been found in possession nor he could prove his title

qua the whole suit property.

Thus, it has been made crystal clear by the learned first appellate court that appellant shall not be dispossessed from two rooms mark R and R-1 as shown in the site plan Ex.DW4/A by the respondents, except in due course of law. This was the only relief which could have been granted in favour of plaintiff-appellant. It is so said because he was not found entitled for any other relief as per the peculiar facts of the case noticed here-in-above and also the evidence available on record. Under these circumstances, it can be safely concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned Additional District Judge in para 29 to 31 of his impugned judgment, which deserve to be noticed here, read as under:-

“Now the question that needs termination here is as to whether the appellant and proforma respondents are entitled to the relief of permanent injunction as prayed for by them. The onus was placed upon plaintiff Bhola Ram to prove his exclusive authorised and long settled possession over the suit property. However apart from the oral statement made by Bhola Ram as PW-7, there is no corroborative evidence on record to prove that he was in exclusive possession of the entire suit property as shown by him in red colour in the site plan Ex.PW5/B. Admittedly major portion of the suit property has been in possession of different tenants. The contention of respondent no.1 is that

the tenants relinquished the tenancy in his favour. However he admitted that the tenants were inducted by Bhola Ram as attorney of Shiv Charan Dass. The report submitted by DW-6 Mahipal Advocate as local commissioner also does not prove the exclusive possession of Bhola Ram over the entire suit property. Admittedly the suit property is in a dilapidated condition as is evident from the site plans filed by both the parties. However the respondents admitted that Bhola Ram had been in possession of two rooms mark R and R1 as shown in the site plan Ex.DW4/A. The said rooms are situated towards northern-eastern corner of the suit property adjoining the gali. An admission is the best proof on which the opposite party can rely upon. The admission by respondent no.1 to the effect that Bhola Ram was in possession of two rooms entitles the appellant and proforma respondents to a decree for permanent injunction to the extent the possession of Bhola Ram had been admitted by respondent no.1. They are entitled to protect their possession over two rooms situated towards northern-eastern corner of the suit property which have been marked as R and R1 in the site plan Ex.DW4/A till they are dispossessed therefrom by adopting due process of law.

*Although respondents no.1 and 3 are proved to be owners of the suit property but they cannot be allowed to take the law in their own hands. So the rulings **Arunima Baruah Vs. Union of India and others, Sri Hanumanthappa Vs. Sri Muninarayanappa and Jiya Lal Vs. Muni Lal (supra)** cited by learned counsel for contesting respondent cannot be made applicable to the facts and circumstances of the present case. However the appellant and proforma respondents have miserably failed to prove their possession over the suit property other than the aforesaid two rooms mark R and R1 as shown in the site plan Ex.DW4/A. They are thus not entitled to the relief*

of permanent injunction with regard to the property as shown in red colour in the site plan Ex.PW5/B and in blue colour in the site plan Ex.DW4/A, other than the portion mark R and R1 as shown in the site plan Ex.DW4/A. Accordingly issue no.3 is decided partly in favour of the appellant and proforma respondents and partly in favour of the contesting respondents. The findings recorded by learned Civil Judge(Senior Division) Rewari on issue no.3 are accordingly modified. The findings recorded by learned Civil Judge(Senior Division) Rewari on issues no.4 to 8 are also hereby affirmed.

In view of the observations made above, this Court does not find any merit in the present appeal filed by the appellant and the same is dismissed. However the cross objections filed by respondents no.1 and 3 are hereby partly allowed. The decree passed by learned Civil Judge (Senior Division) Rewari is partly modified to the extent that appellant and proforma respondents are entitled to protect their possession upon part of the suit property i.e. the rooms mark R and R1 as shown in the site plan Ex.DW4/A. A decree for permanent injunction is passed in favour of the appellant and proforma respondents restraining the contesting respondents from dispossessing them from the aforesaid property i.e. two rooms mark R and R1 as shown in the site plan Ex.DW4/A situated towards northern-eastern corner of the suit property save in due course of law. The site plan Ex.DW4/A shall form part of the decree.”

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 was also unable to refer to 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus 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 both the appeals are 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, both the regular second appeals stand dismissed, however, with no order as to costs.

July 10, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No