

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

RSA No.527 of 2017 (O&M).

Decided on:-January 31, 2017.

Gurnam Singh.

.....Appellant.

Versus

Malook Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Munish Bhardwaj, Advocate
for the appellant.

HARI PAL VERMA, J.

Appellant-plaintiff has filed the present regular second appeal against the judgment and decree dated 26.10.2016 passed by learned Additional District Judge, Amritsar whereby his appeal against the judgment and decree dated 28.08.2015 passed by learned Civil Judge (Junior Division), Ajnala, was dismissed.

Briefly stated, the appellant-plaintiff has filed a suit for permanent injunction against the respondents-defendants in respect of land measuring 1 Marla 3 Sarsahi situated at village Dudhrai within the Lal Dora and the same is abutting the house of plaintiff. The suit property is being used as Khokha/kiosk for sale of chicken meat. It is claimed that the property is ancestral in nature and the plaintiff has inherited the ownership from his forefathers. He being in settled, continuous and peaceful possession over the suit property, the respondents-defendants have no right or title in the

same. But still with the help of muscle powers, the defendants want to dispossess the plaintiff forcibly and illegally from the suit property. Hence, the suit.

Written statement has been filed by the respondents-defendants denying the case of the appellant-plaintiff in its entirety. Preliminary objections regarding maintainability, locus standi, cause of action, estoppel from filing the suit, concealing material facts, incorrect site plan and plaintiff never remained in possession have been pleaded. However, on merits, the averments made in the plaint have been denied.

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

1. Whether the plaintiff is entitled to the relief of permanent injunction? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiff has got no locus standi or cause of action? OPD
4. Whether the plaintiffs have concealed the material facts from the knowledge of this court? OPD
5. Whether the plaintiff is estopped by his own act and conduct? OPD
6. Relief.

Learned trial Court vide judgment and decree dated 28.08.2015 dismissed the suit as the plaintiff has failed to prove the ancestral nature of the suit property. The trial Court has observed as under:

“21. In present case, at one hand, plaintiff is claiming to be in possession over suit property by taking a stand in plaint that suit property is his ancestral property. But, from the

evidence on record this court is not constrained to say that plaintiff has miserably failed to prove the ancestral nature of suit property and hence said stand of plaintiff stands rejected. If cross-examination of plaintiff appearing as PW-1 dated 24.04.2015 is looked into then it is clearly coming as an admission that at present defendants are in possession over suit property, which cannot be ignored. Further, if cross-examination of one of defendants appearing as DW-5 Malook Singh is looked into then it is reflected that the khokha/kiosk for meat shop is situated at Pucca Road. The site plan relied upon by plaintiff as Ex.P1 if perused reflects that it is prepared by private architect who appeared as PW-3 and during cross-examination his stand he prepared the site plan in his office and not over the site is also diminishing the probative value of said site plan. Apart from site plan plaintiff has not been in possession of any document which would reflect possession part with plaintiff. It is pertinent to add here that said site plan is also not a document of proved possession. The aforesaid admission of plaintiff regarding defendant in possession is making this court of view that plaintiff has failed to prove his case. Quickly, I would like to add that there is no counter-claim involved and hence, it is observed that defendants have also failed to lead positive evidence regarding their possession and same cannot be commented for establishment of any positive rights in favour of defendants. Thus, in view of aforementioned discussion, issue in hand is accordingly decided against plaintiff and in favour of defendants.”

Aggrieved against the aforesaid judgment and decree passed by the trial Court, the appellant-plaintiff filed an appeal before the lower appellate Court which was also dismissed by learned Additional District Judge, Amritsar vide judgment and decree dated 26.10.2016 as the plaintiff

failed to produce any cogent evidence to prove the plea taken by him in the suit.

It is in the aforesaid circumstances, the appellant-plaintiff has filed the present regular second appeal.

The appellant-plaintiff has formulated the following substantial questions of law:

- (i) Whether both the courts below have acted illegally and totally misconstrued the facts and evidence on record while dismissing the suit of the appellant?
- (ii) Whether both the courts below totally misconstrued the evidence on record which clearly shows that appellant-plaintiff is in possession of the suit property for a long period and he is running his business of selling meat/chicken and respondents have no right and title over it, particularly when this fact is admitted by the respondents during cross-examination?
- (iii) Whether lower appellate court failed to consider the resolution of the Gram Panchayat dt. 12.06.1984 vide which suit property was given to the appellant-plaintiff by the Gram Panchayat for running his business?
- (iv) Whether passing of judgment and decrees by both the courts below has resulted in miscarriage of justice?

Learned counsel for the appellant-plaintiff has argued that the Courts below have failed to appreciate that the suit property is in possession of the appellant-plaintiff for a long period and it abuts the house of the appellant which was given by the Gram Panchayat, Dudhrai vide resolution dated 12.06.1984. It is in consequence thereof the appellant is running his business of selling chicken meat by constructing a small wooden Khokha over the suit property. He has spent a huge amount on construction. The property is owned by the Gram Panchayat and had been given to the

appellant for his business and his possession is continuous for many years. The respondents-defendants are muscle-men and want to forcibly dispossess the appellant from the suit property.

He has further argued that DW3 Kashmir Singh has stated in his cross-examination that the appellant-plaintiff is running a shop of chicken selling at village Dudhrai. Similarly, DW5 Malook Singh has also admitted in his cross-examination that the appellant-plaintiff has erected a Khokha over the suit property. Thus, possession of the appellant-plaintiff is established and he being in peaceful possession of the suit property cannot be dispossessed nor the respondents-defendants can interfere in his peaceful possession on the suit property. A person in possession of a property cannot be dispossessed forcibly and illegally, except in due course of law. The resolution dated 12.06.1984 passed by the Gram Panchayat, Dudhrai has not been considered by the Courts below whereby the Gram Panchayat had given the suit property to the appellant-plaintiff so as to run his business. This fact was not appreciated by the lower appellate Court for the reason that it was never pleaded before the trial Court.

I have heard learned counsel for the appellant-plaintiff.

The record reveals that it is not the pleaded case of the appellant-plaintiff that the suit property was given to him by the Gram Panchayat, Dudhrai through a resolution dated 12.06.1984. Rather, the pleaded case of the appellant is that the suit property is an ancestral one. The trial Court has framed issue No.1 as to whether the plaintiff is entitled to the relief of permanent injunction and the plaintiff has failed to prove how the suit property is an ancestral one. During cross-examination, the appellant-

plaintiff has, rather, admitted that he had not purchased the suit land and he has nothing to prove that he is owner of the suit land. The plea of the plaintiff that the suit property is an ancestral one has not been proved. The plaintiff is required to stand on his own legs, but since he has not led any evidence in support of his pleadings, the trial Court has rightly dismissed his suit.

The subsequent plea as raised by the appellant-plaintiff by way of application under Order 41 Rule 27 CPC so as to bring on record the resolution dated 12.06.1984 passed by the Gram Panchayat, Dudhrai also did not find any support in his evidence. Rather, he himself, while appearing in the witness box as PW1, had admitted that at present, the defendants are in possession of suit land. Thus, in the absence of any cogent evidence, the lower appellate Court has rightly dismissed the appeal filed by the appellant-plaintiff.

Both the Courts below have recorded concurrent findings of fact. No substantial question of law is involved in the present regular second appeal as both the Courts below have not committed any material irregularity or illegality which may warrant interference. Accordingly, the impugned judgments and decrees passed by the Courts below are affirmed and the present regular second appeal is dismissed.

January 31, 2017

Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No