

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

RSA No.2280 of 1990

Date of decision:13.7.2018

Mohinder Pal Gugnani

... Appellant

Vs.

Bhagat Singh Malik

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M.S.Rana, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 22.8.1990 passed by the Additional District Judge whereby judgment and decree of the trial Court decreeing the suit, has been set aside.

The facts which emanate from the pleadings of the parties are that plaintiff instituted the suit for permanent injunction restraining the defendant from making any encroachment and construction upon the land of the plaintiff and if otherwise, for possession by way of mandatory injunction on the premise that land described in para No.1 of the plaint was owned and possessed by Shiva Wanti, owing to inheritance from her husband Sardari Lal.

The plaintiff purchased the land from Shiva Wanti, vide sale deed dated 19.12.1979. However, the defendant started collecting the

building material with intention to make encroachment shown in red colour in the site plan and therefore, cause of action accrued claiming the injunction.

The suit was contested on the ground of maintainability, delay and laches, estoppel and protection under Section 41 of Transfer of Property Act, was also claimed. On merit, it was stated that there was no sale deed in favour of the plaintiff, for, allotment made in favour of Sardari Lal by the Department of Consolidation, vide order dated 24.5.1965 was cancelled. In fact, the land in dispute was under cultivating possession of the tenants at Will and Custodian Department was owner of the suit land.

The land bearing khasra no.13787/11014/8276 was 23 biswas and out of it, 13 biswas were allotted to one Mohan Lal son of Ram Chand Arora, who further sold the same. In this process, the property exchanged in many hands and ultimately, vide sale deed dated 23.4.1984, the defendant purchased land measuring 116 1/3 square yards from Bimla Kataria and after taking the possession constructed two rooms on the suit land from the date of purchase and no objection of any sort was raised by anyone.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is owner in possession of the suit land?OPP*
- 2. Whether the suit is not maintainable in the present form?OPD*
- 3. Whether the plaintiff is estopped from filing the present*

suit by his act and conduct and acquiescence as alleged in the written statement?OPD

4. *Whether the plaintiff has no locus standi to file the present suit?OPD*

5. *Whether the plaintiff has no cause of action?OPD*

6. *Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction?OPD*

7. *Whether the defendant has become purchaser of the disputed plot and his share is saved by the provision of Section 41 of the Transfer of Property Act?OPD*

8. Relief.”

The appellant-plaintiff in support of the aforementioned submissions examined the following witnesses:-

PW1 - Plaintiff

PW2 - Nand Lal petition writer

PW3 - V.S.Rathee, Advocate Local Commissioner

and brought on record the following documents:-

Ex.P1 khasra girdawari kharif 1979 to Rabi 81

Ex.P2 certified copy of the jamabandi for the year 1972-73

Ex.P3 certified copy of the revenue record

Ex.P4 certified copy of the judgment passed in Civil Appeal No.102/13 of 1984 in a case titled as Mohinder Pal Vs. Devki Bai,

Ex.P5 site plan

Ex.P6	report of Local Commissioner
Ex.P7	site plan prepared by Local Commissioner
Mark A	certified copy of sale deed dated 19.12.1979
Mark B	certified copy of mutation No.9504
Mark C	certified copy of mutation No.9503

On the other hand, respondent-defendant appeared himself as DW1 and tendered into evidence Ex.D1 certified copy of the order dated 12.3.1987 passed by the Custodian Department.

On the basis of aforementioned evidence brought on record, the trial Court vide judgment and decree dated 27.5.1989 decreed the suit by holding the plaintiff to be owner in possession of land in dispute restraining the defendant permanently from making any encroachment and construction upon the land in dispute. The defendant was directed to demolish the same within a period of two months from the date of decree at his own expenses otherwise plaintiff was given liberty to demolish the construction.

The aforementioned judgment and decree in appeal was assailed by the defendant. The Lower Appellate Court, vide judgment and decree dated 22.8.1990 reversed the findings of the trial Court by allowing the appeal.

Mr. M.S.Rana, learned counsel appearing on behalf of the appellant-plaintiff by assailing the judgment and decree of the Lower Appellate Court raised the following legal submissions:-

1. Judgment and decree of the Lower Appellate Court suffers from illegality and perversity, for, if at all, the Lower Appellate

Court found that application submitted by the plaintiff for demarcation of the land was declined by the trial Court, could have appointed the Local Commissioner to ascertain the factual aspect.

2. Once the plaintiff has been held to be owner under issue no.1 by the trial Court, the Lower Appellate Court committed error by holding that plaintiff was not owner of the land.

3. There was no controversy regarding khasra numbers of the land in dispute, thus, the Lower Appellate Court had no occasion for non-suiting the plaintiff on the ground that the land in dispute did not form the part of the land owned by the plaintiff.

4. The certified copy of the sale deed was admissible in evidence, even if it was a marked document, therefore, the Lower Appellate Court ought not to have non-suited the appellant on the ground of its admissibility.

5. The plaintiff remained owner of the suit land as it was established on record that allotment in favour of Sardari Lal had not finally been cancelled. The Local Commissioner found the encroachment as alleged in the plaint, therefore, there was no occasion for the plaintiff to get the land demarcated from the revenue officer comprising of three khasra numbers.

6. Ex.P4, Civil Appeal No.102/13 of 1984 in a case titled as Mohinder Pal Vs. Devki Bai, was decided in favour of the appellant and two Regular Second Appeals were filed,i.e.,RSA No.2920 of 1984 titled as Mohinder Pal Vs. Smt. Omwati; and RSA No.2092 of 1985 titled as Smt.

Devki Bai Vs. Mohinder Pal and this Court, vide common judgment dated 15.11.2013 disposed of the appeals by issuing direction in respect of the suit land for executing the sale deed by the plaintiff and to secure the plaintiff value from the defendant, in other words, appeal of Devaki Bai was allowed by setting aside the decree for mandatory injunction for removal of construction and defendant-appellant Devaki Bai was held liable for the present market price of the property. The appeal of plaintiff-Mohinder was partly allowed by declining the prayer for mandatory injunction and relief for the value to the extent of 211 square yards was granted and its value was determined as current market rate, in essence, it was ordered that there shall be sales by the plaintiff to the defendants.

7. The aforementioned findings leave to irresistible conclusion that plaintiff was owner of the land and therefore, plea of the defendant with regard to cancellation of allotment in favour of Sardari Lal was wholly misplaced. The defendant as per the material placed on record found to have been encroached upon khasra no.13787/11014/8276 .

As per office report, respondent has been served. However, there is no representation on his behalf. Accordingly, I proceed further to decide the appeal being of 1990 matter.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Rana, for, total area of khasra no.13787/11014/8276 alleged was 23 biswas but the plaintiff claimed ownership and possession of 10 biswas,

therefore, the plaintiff did not claim any relief regarding the land purchased by the defendant.

It is also matter of record that land in dispute had not been purchased by the defendant. The question which arose is whether the defendant had been in illegal possession of the suit land during the pendency of the suit or not. The appellant had not been able to prove the copy of the sale deed dated 19.12.1979. The suit for mandatory injunction was purportedly filed under Section 39 of Specific Relief Act, 1963. Section 39 reads as under:-

“39. Mandatory injunctions.—When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.”

On plain and simple reading of the aforementioned provisions, it is evident that when there is breach of obligation, other party can invoke the jurisdiction of the Court and in case, such suit is decreed, limitation as per the provisions of Article 135 of Limitation Act is 3 years. The defendant was not governed by the findings rendered in Civil Appeal No.102/13 of 1984 in a case titled as Mohinder Pal Vs. Devki Bai, Ex.P4 being not a party, for, there was a clear admission of the defendant in the written statement that on the north side of his house, there was a house of Devaki Bai. Except self serving statement of plaintiff, no other evidence had been

brought on record to prove that defendant had encroached upon the area and raised the construction on the land belonging to the plaintiff, therefore, rightly so the Lower Appellate Court held that plaintiff's suit was not maintainable. The plaintiff has failed to lead any evidence with regard to ownership of the suit land as the sale deed in question for the sake of repetition has not been proved in accordance with law nor any demarcation was done by the plaintiff initially. However, at the fag end of the trial, an application was moved for getting the land demarcated which was dismissed and the revision filed before this Court was also dismissed. The aforementioned order has not been assailed by invoking the provisions of Order 43 Rule 1A of Code of Civil Procedure. All these aspects have been taken care by the Lower Appellate Court, therefore, I do not find any illegality and perversity in the impugned findings.

No ground is made out for interference in the impugned judgment and decree of the Lower Appellate Court, much less no substantial question of law arises for adjudication of the present appeal.

The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

July 13, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No