

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

RSA No. 1984 of 1992(O&M)

Date of decision : 10.08.2018

Madan Lal Sarna

..... Appellant

versus

Brij Lal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K.Gupta, Advocate for the appellant.

Mr.Adarsh Jain, Advocate for respondent No.3.

AMIT RAWAL, J. (ORAL)

Challenge in the present Regular Second Appeal is to the judgment and decree of the Courts below whereby suit for permanent injunction against the defendants has been dismissed.

The facts which are relevant for the adjudication of the lis are that the plaintiff instituted suit claiming the relief of permanent injunction restraining the defendants from forcible interference and dispossession from the suit property i.e. land comprised in Khewat No. 422 Khata No. 573, Khasra No. 508 min (1-0) situated at Nabha, as per jamabandi for the year 1975-76, on the premise that the plaintiff and the defendants No. 4 and 5 were in possession of the suit property for the last 35 years whereas defendants No. 1 to 3 had been extending threats to dispossess them. The aforementioned suit was contested by the defendants by denying the ownership and possession of the plaintiff and claimed that the property was

owned by Punjab Government and had been given on lease for the last more than 45 years which had been renewed regularly. The lease in favour of Gaushala had expired on 15.06.1985 and the defendants applied for renewal and extension of the same and the matter was pending with the Government. The question of dispossession of plaintiff or extension of lease did not arise. Since the parties were at variance, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled for injunction as prayed for?OPP
2. Whether the suit is barred u/o 2 rule 2 CPC?OPD
3. Whether the suit is not within time?OPD
4. Whether the suit is not maintainable?OPD
5. Whether the suit is bad for non-joinder of necessary parties?OPD
6. Relief.

Both the parties led evidence. Plaintiff examined as many as five witnesses and brought on record documents Ex.P-1 to Ex.P-7, the revenue record to establish the alleged possession. On the other hand defendants examined DW1-Mohan Lal and DW2- Bhanwar Lal Ahluwalia and closed the evidence. On preponderance of evidence, the trial Court dismissed the suit by holding that the plaintiff, before framing of the issues on 27.02.1986, suffered a statement that he had filed a suit for possession in respect of the same very property which was decreed by the trial Court but was ordered to be withdrawn by the Lower Appellate Court owing to certain defects. The aforementioned findings were upheld by the Lower Appellate Court.

Mr. R.K.Gupta, learned counsel appearing on behalf of the appellant submitted that both the Courts below have committed illegality and perversity in not noticing the fact that the nature of the suit property in

both the suits was different. In the previous suit it was in respect of property No. 601 A/B i.e. in the civil suit No. 70 of 1972 including the construction as per site plan, therein, whereas, the present suit was for permanent injunction restraining the defendants from forcible interference and dispossession from the suit property i.e. land comprised in Khewat No. 422, Khata No. 573, Khasra No. 508 min (1-0) situated at Nabha.

The Lower Appellate Court was completely swayed away with the aforementioned statement despite noticing that the plaintiff had been able to prove on record his possession. Thus, there is a fallacy. The Lower Appellate Court, being the last Court of fact and law, was required to examine all the documents in extenso.

An application under Order 41 rule 27 of the CPC was filed which remained undecided.

Per contra, Mr. Adarsh Jain, learned counsel appearing on behalf of the respondents submitted that the plaintiff cannot be permitted to wriggle out of the statement and, therefore, was estopped from agitating the cause for which he was not successful. The person who is seeking possession cannot be said to be in possession and, therefore, rightly so injunction was not granted. The concurrent finding of the fact and law cannot be interfered with until and unless there is gross illegality and perversity.

I have heard learned counsel for the parties, perused the paper book and am of the view that this is a clear case where the matter requires to be revisited by the Lower Appellate Court owing to the identity of the property in both the suits i.e. civil suit No.70/T/77 of 20.10.1972 and Civil Suit No.102 of 19.1.1986. The aforementioned fact has not been disputed

by learned counsel for the appellant as Ex.D2 is the judgment in respect of the suit No. 70 of 1972 qua property No. 601 A/B whereas the present suit, as noticed above, is different. Thus, for all intents and purposes the statement made by an ignorant litigant cannot be read against him. The Courts, in my view were required to go through the documentary evidence. The Lower Appellate Court in appeal could find that the plaintiff had been able to prove on record the material vis-a-vis the possession but did not refer to the aforementioned evidence except the statement noticed above. In such circumstances, I deem it appropriate to set aside the judgment and decree of the trial Court and remand the matter to the Lower Appellate Court to decide the appeal afresh. I cannot remain unmindful of the fact that while issuing notice of motion in the aforementioned appeal, this Court, vide order dated 14.10.1992, had also ordered maintenance of status quo qua possession. The said order, in my view in the equity as well as interest of justice, is ordered to be maintained, by issuing direction to the Lower Appellate Court to decide the same within a period of six months. The record of the lower Courts be also sent back. Parties through their counsel are directed to appear before the Lower Appellate Court on 07.09.2018.

Appeal stands disposed of accordingly.

(AMIT RAWAL)
JUDGE

10.08.2018
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No