

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2194 of 1995 (O&M)

Date of Decision: 23.05.2018

Harnek Singh and others

..... Appellants

Versus

Gurbhag Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.P. Jain, Sr. Advocate with
Mr. Dheeraj Jain, Advocate and
Ms. Bhavna Dutta, Advocate and
Mr. V.K. Chaudhary, Advocate
for the appellants.

Mr. J.S. Brar, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Detailed arguments were heard and the judgment was reserved
on 08.05.2018. Now, this Court proceeds to release the judgment.

Defendants-appellants are in the regular second appeal against
the judgment passed by the learned First Appellate Court reversing the
judgment passed by the learned trial Court and decreeing the suit filed by
the plaintiffs.

Plaintiffs claimed to have purchased the land from its original
owners Sarwan Singh, Gurnam Kaur and Gurbachan Kaur vide registered
sale deed dated 10.05.1989. The plaintiffs have claimed that the defendants
are trying to take forcible possession from them. The suit was contested by
the defendants and it was pleaded that in fact vendors of the plaintiffs were

not the owners of the suit property. The possession of the plaintiffs was also denied. The defendants further claimed that they filed an application before Assistant Collector, G.II, Dharmkot for correction of the Khasra Girdawari which has been corrected vide order dated 11.10.1990. Learned trial Court after relying upon the order passed by the Assistant Collector, G.II dismissed the suit filed by the plaintiffs.

The plaintiffs filed the first appeal. Learned First Appellate Court after re-appreciating the evidence available on the file including additional evidence filed, accepted the appeal. Learned First Appellate Court has referred to a previous judgment and decree dated 26.08.1981 wherein predecessor-in-interest of the plaintiffs had filed a suit for possession which was decreed and pursuant thereto, the possession was delivered to the vendors of the plaintiffs through Rapat Roznamcha dated 13.12.1984.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned senior counsel for the appellant has submitted that the original sale deed has not been produced on file. He has further submitted that there was criminal proceedings as Avinashi Singh, the Power of Attorney holder of the vendor of the plaintiffs was murdered and the defendants-appellants were made accused therein, however, the defendants-appellants have been acquitted. He has further submitted that another case under Section 379, IPC was registered against the defendants-appellants in which also they have been acquitted. He has further submitted that in the plaint, previous judgment and decree dated 28.08.1981 has not been

pleaded. Therefore, the additional evidence, reliance whereupon has been placed by the learned First Appellate Court, is beyond pleadings. In the last, learned counsel for the appellants has submitted that let the possession of the land in dispute be got determined by appointing a Local Commissioner.

On the other hand, learned counsel for the respondents-plaintiffs has pleaded that sale in favour of the plaintiffs is not in dispute. He has further submitted that the evidence is not required to be pleaded. He has further submitted that any findings arrived at in the criminal cases would not be binding on the Civil Courts. He has drawn attention of the Court to the revenue record where the plaintiffs are in continuous possession of the property in dispute. He further submitted that the order passed by the revenue authorities during the pendency of the suit which is admittedly summary in nature, cannot bind the Civil Court which is entitled to evaluate the evidence and record independent finding.

This Court has considered the submissions. It is apparent from the reading of the oral evidence that execution of sale deed in favour of the plaintiffs is not disputed. Therefore, non-production of sale deed would not make any difference because this fact is an admitted fact.

Argument of learned senior counsel is that previous judgment and decree dated 26.08.1981 is beyond pleadings does not have substance because pleadings have to be precise and concise. Only necessary facts are required to be pleaded and not the evidence. The previous judgment and decree is a matter of evidence. Not only, the previous judgment and decree has been proved through which the vendors the plaintiffs were held entitled to possession and in execution of the aforesaid decree, delivery of

possession of the predecessor of the plaintiffs is proved vide entry in the record of the revenue official dated 13.12.1984. As regards the judgments/orders passed by the Courts while deciding criminal cases, it is well settled that the aforesaid judgments can be piece of evidence but not binding on the Civil Courts. As regards the orders passed by the revenue authorities, it is suffice to notice that the orders passed by the revenue authorities while ordering correction of Khasra Girdawari is not final and the Civil Court is entitled to appreciate the evidence available on the file.

Last request of learned counsel is that a Local Commissioner be appointed for determining the possession, it is sufficient to note that a Local Commissioner cannot be appointed to determine who is in possession of the property. Local Commissioner can only be appointed to carried out local investigation. In the present case, even after a decree for possession has been passed in favour of the vendor of the plaintiffs which has been implemented by delivery of possession, still, the defendants-appellants without establishing any right, title or interest in the property claim to be in possession of the same.

Learned senior counsel for the appellants further submitted that before the judgment was delivered by the learned First Appellate Court, his clients had filed an application for transferring the case before District & Sessions Judge. He submitted that the learned First Appellate Court should not have passed the order.

In the considered opinion of this Court, merely because an application for transfer of the case has been filed that does not debar the Court to proceed with the case unless and until there is specific orders of stay of proceedings. The appeal remained pending with the learned First

Appellate Court for three years. The judgment passed by the learned First Appellate Court is well reasoned and after appreciation of evidence which is not shown to be perverse.

In view of the discussion made above, this Court does not find any good ground to interfere with the finding of fact arrived at by the learned First Appellate Court.

Appeal is dismissed.

23.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No