

Sr. No. 379

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

**RSA No. 2585 of 1995(O&M)
Decided on: 01.03.2018**

Nahari

.....Appellant

versus

Smt. Dharamwati and another

.....Respondents

RSA No. 2586 of 1995(O&M)

Nahari and another

.....Appellant

versus

Smt. Dharamwati

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amit Jain, Advocate
for the appellant.

Mr. Sudhir Aggarwal, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

This judgment shall dispose of two appeals i.e. RSA No. 2585 of 1995 and RSA No. 2586 of 1995, both filed by Nahari against Smt. Dharamwati challenging the judgment of reversal passed by the lower Appellate Court whereby the suit for permanent injunction filed by Smt. Dharamwati was ordered to be decreed and the second suit filed by Nahari was ordered to be dismissed by reversing the judgment and decree passed by the Trial Court.

For convenience the parties herein would be referred to as the plaintiff and defendant as they were described in the suit filed by Smt. Dharamwati.

The brief facts of this case as mentioned in the judgment of the

lower Appellate Court are that Smt. Dharamwati had filed Civil Suit No. 438 of 1989 on 31.01.1989 against Nahari and his vendor Ram Sarup praying for an injunction restraining the defendants from interfering into the possession of the plaintiff. In the suit it was claimed that the suit property was a residential-cum-commercial plot; with the measurements and boundaries as given below:-

“Measurements: AB=19.03 meters BC=9.50
meters
CD=20.48 meters DA=11.27
meters.

Boundaries North: Gali House of Dayaram
Khat
South: Gali House of Ram
Kishan
East: Rasta Aam.
West: House of Sohan Lal
Koli and Raghbar.”

It was averred in the suit that the suit property was inherited by the plaintiff Smt. Dharamwati from her father. The plot was having a boundary wall and shop was earlier constructed in the suit property. The defendants were bent upon harassing the plaintiff. Therefore, the injunction was prayed for.

Another Civil Suit No. 434 of 1989 was filed on 01.02.1989 by Nahari against Smt. Dharamwati and Devi Charan wherein Nahari claimed to be owner in possession of the property with the details given below:-

“East: Chowk = 33 feet.
West: Land of Raghbar Dayal = 33 feet.
North: Land of Smt. Dharamwatideft.No.1 = 30'
South: Municipal Committee Road = 30 feet.”

It was pleaded by Nahari in his suit that he was the owner in possession of the suit property having purchased the same from Ram Sarup son of Budhi through sale deed dated 16.01.1989. It was further pleaded in the suit that he had constructed a wall on the northern side of the plot and he

was carrying on his business of selling 'Bhusa' in that plot. However, Smt. Dharamwati and others were trying to demolish the northern wall and interfering with the peaceful possession of the said Nahari.

The Trial Court consolidated both the suits vide Order dated 15.02.1990 with a order that further proceedings will be taken in this case in a consolidated manner.

Parties led their respective evidence.

After hearing the parties and appreciating the evidence on record, the Trial Court dismissed the suit filed by Smt. Dharamwati and decreed the suit filed by Nahari. While dismissing the suit filed by Smt. Dharamwati the Trial Court held that the plaintiff has not placed on record any document of her title to the suit property. It was further observed by the Trial Court that even PW-1 Sham Lal; examined by the plaintiff Smt. Dharamwati, admitted the size and boundaries of the plot in question as mentioned in the sale deed of defendant Nahari. While dealing with the case of the defendant Nahari the Trial Court held that the title of the defendant stands proved by the sale deed proved on record. Even the possession of the defendant is proved on the record of the case because the vendor of the defendant had taken possession of the suit property through a warrant of possession. It was further held that the vendor of the defendant had got the suit property through a court decree which mentioned the boundaries in the same manner as were described in the sale deed in favour of the defendant. The Trial Court further held that the sale deed in favour of the defendant have not even been challenged by the plaintiff Smt. Dharamwati. Still further the Trial Court held that there have been a series of litigation regarding this property. The plaintiff has given different

boundaries and dimensions of the plot in question in different litigations. Hence the plaintiff herself is not sure of the existence of the plot or its exact boundaries and dimensions. It was also held that the boundaries and dimensions mentioned by the plaintiff in earlier litigations are different than the boundaries mentioned in the sale deed of the defendant Nahari. The Court further held that the witnesses examined by the defendant Nahari has proved the case in his favour whereas the witnessess examined by the plaintiff Smt. Dharamwati have not been categoric in their deposition and have given a wavering version of the property and its ownership. Hence the Trial Court dismissed the suit filed by Smt. Dharamwati and decreed the suit filed by defendant Nahari, through a common judgment. Aggrieved against the judgments and decrees the plaintiff Smt. Dharamwati filed appeal before the lower Appellate Court.

After hearing the parties and appreciating the evidence the lower Appellate Court reversed the judgment and decree passed by the Trial Court. The lower Appellate Court ordered the suit filed by plaintiff Smt. Dharamawati to be decreed and the suit filed by defendant Nahari to be dismissed, vide a common judgment.

While reversing the judgment and findings recorded by the Trial Court, the lower Appellate Court observed that it is proved on record that it was the plaintiff who had raised the construction over the suit property after getting the site plain sanctioned from the Municipal Committee. Boundaries of the plot are matching with the site plan sanctioned by the Municipal Committee. It was further observed by the lower Appellate Court that there is not even suggestion put to witness of plaintiff that the construction over the plot in question was not raised by the

plaintiff. Still further it was held by the lower Appellate Court that even the shop constructed on the suit property was rented out by plaintiff to one Badri Parshad who has appeared as PW-6 in the suit and have deposed as to have taken the shop on rent and has also proved the existence, boundaries and dimensions of the plot in question. The lower Appellate Court also held that the plaintiff was having title to the suit property; as confirmed by the Court decree in favour of the father of the plaintiff in a partition suit; Ex: P-11. She has inherited the property from her father. Hence there can not be any dispute regarding title of the plaintiff qua the suit property. The lower Appellate Court also observed that there have been repeated attempts against the plaintiff Smt. Dharamwati to snatch away the property from her. Earlier three litigations were filed regarding this very property against the plaintiff. All the three were decided in favour of the plaintiff Smt. Dharamwati. Suit filed by one Raghbar Dayal against the plaintiff was also dismissed by the Court and the decision was given in favour of plaintiff Smt. Dharamwati. Therefore, it is obvious that having failed in their repeated attempts to take away the property from Smt. Dharamwati; the defendant Nahari and his predecessor-in-interest have devised the methodology of ex parte decrees; without impleading the plaintiff Smt. Dharamwati as party; to create title deed in their favour. The lower Appellate Court further held that the Trial Court has not properly appreciated the evidence led by the plaintiff. The witnesses examined by the plaintiff has duly proved the title and status of the suit property; including the boundaries and the dimensions. From the evidence it is clear that what is being claimed by the defendant Nahari as a separate plot is infact part of the bigger plot claimed by the plaintiff Smt. Dharamwati. The

defendant is trying to dispossess from the plaintiff from the southern part of the plot by claiming to be a separate plot.

So far as the title of the defendant Nahari is concerned, the lower Appellate Court held that the defendant claims to have purchased the property from Ram Sarup son of Budhi. However, the said Ram Sarup himself has claimed the title only on the basis of a collusive decree suffered by sons of Raghbar Dayal, who had already lost in his suit against the plaintiff Smt. Dharamwati. In this collusive suit plaintiff, Smt. Dharamwait was not impleaded as a plaintiff so as to perpetuate a fraud upon the Court. Hence the decree was not binding upon the rights of plaintiff Smt. Dharamwati. Besides this neither has defendant Nahari claimed nor has vendor Ram Sarup had ever claimed any other document of title of the suit property in their favour. Hence the vendor of the defendant Nahari can not be deemed to have passed any valid title to defendant Nahari through the alleged sale deed. Even qua possession the lower Appellate Court held that the Trial Court has wrongly relied upon the alleged warrants of possession in favour of Ram Sarup in execution of the above said collusive decree. The lower Appellate Court held that the warrants of possession relied upon by the defendant have not been proved as per law; by examining any witness from the Court. Hence this document can not be relied upon. Therefore, it can not be accepted that the defendant was in possession of the suit property on the basis of this warrant of possession. On the contrary the witnesses examined by the plaintiff Smt. Dharamwati has duly proved her possession. Regarding the claim of the defendant Nahari having raised northern wall of the plot the lower Appellate Court held that the existence of this wall itself has not been proved. Otherwise also, if any wall has been

constructed that has been constructed by the defendant Nahari during the pendency of the suit. The lower Appellate Court also held that best person for proving the case of the defendant Nahari would have been his vendor Ram Sarup. However, for the reasons best known to the defendant the said Ram Sarup has not been produced before the Court as a witness. The lower Appellate Court also held that the defendant Nahari did not even file the site plan of the suit property along with his plaint or alongwith the written statement filed in the suit by Smt. Nahari. He seems to have created the site plan subsequently, which has not even been proved on record. Accordingly the suit filed by the plaintiff Smt. Dharamwati was ordered to be decreed and the suit filed by the defendant Nahari was ordered to be dismissed.

Against that common judgment and decree Nahari has filed the present two regular appeals.

While arguing the case, the learned counsel for the appellant has submitted that the plaintiff Nahari has given different site-plans in different litigation which do not match with the boundaries and dimensions given in the present plaint. Therefore, it is not proved on record that the suit property is the same property which the plaintiff Nahari has been claiming through-out. Still further it is submitted by the counsel that no document of title has been produced on record by the plaintiff Smt. Dharamwati. Hence she is not entitled to any injunction against the defendant who has become owner of the suit property by purchase through a sale deed; with particular boundaries. Learned counsel for the appellant submits that the sale deed has been proved on record by examining the witnesses. Hence it is prayed that the appeal be allowed and the suit filed by the plaintiff Dharamwait be ordered to be dismissed and the suit filed by the defendant/appellant be

ordered to be decreed.

On the other hand, learned counsel for the respondent has argued that the witnesses examined by the plaintiff Smt. Dharamwati has duly proved on record the possession of the plaintiff over the suit property. It is not disputed that the plaintiff had inherited her father being the sole legal heir. Her father had got the suit property in a partition suit. Hence the title of the suit property is proved to be vesting in the plaintiff Smt. Dharamwati. It is submitted by the counsel that repeated attempts have been made by the plaintiff, predecessor-in-interest and other persons to dispossess the plaintiff from the suit property. However, all the litigation have ended in favour of the plaintiff. It is submitted by him that the construction was raised in the suit property by the plaintiff Smt. Dharamwati after getting the site plan sanctioned from Municipal Committee. The boundary wall was also constructed. Hence she is fully entitled to injunction against the defendants. Accordingly, it is submitted that lower Appellate Court has rightly reversed the judgment and decree passed by the Trial Court.

Having heard learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that the argument raised by learned counsel for the appellant can not be sustained. The judgment and findings recorded by the lower Appellate Court deserve to be sustained. Admittedly, the father of the plaintiff Smt. Dharamwati got property in partition suit filed against her father by his collaterals. The plaintiff Smt. Dharamwati has inherited the suit property from her father. Otherwise also, even the site plan relied upon by the defendant shows the plot of the plaintiff to be on northern side of the plot of

the defendant. Hence the existence of the plot of the plaintiff is not even disputed by the defendant. The defendant has tried to only dispute the boundaries and dimensions of the suit property by referring to the earlier site plans, statedly, submitted by the plaintiff Smt. Dharamwati herself in the earlier litigation. However, merely because the boundaries and dimensions in earlier suits were differently mentioned does not mean that the plot with the boundaries and dimensions as given in the present suit did not exist. The boundaries and dimensions mentioned by the plaintiff Smt. Dharamwati in the earlier suits related to only the particular claim between those parties at that relevant time. The boundaries or dimension of particular claims in particular suits can very well be different as per the claims raised by plaintiffs of those cases, the decisions of courts in earlier cases were final upon the boundaries as claimed by the plaintiffs of those cases and not upon the boundaries and dimensions of the plot as claimed by plaintiff Smt. Dharamwati in the present case. However, the fact remains that all the earlier suits; filed by different persons, including the one filed by Raghbar Dayal, from and against whom Ram Sarup, the vendor of the defendant had claimed the suit property, were decided by the courts in favour of plaintiff Smt. Dharamwati. Hence by any means, it can not be said that the plaintiff Smt. Dharamwati is not the owner of the suit property.

The only question in the present case could be regarding the dimensions of the suit property as claimed by the plaintiff. However, there does not appear to be any illegality or perversity in the finding recorded by the lower Appellate Court that the boundaries and dimensions mentioned by the plot in question by the plaintiff tally with the site plan submitted by her to the Municipal Committee for getting the approval of the building plan on

the suit property way back in the year 1978. Accordingly, the boundary wall was raised and the shops were constructed over the suit property.

The lower Appellate Court has rightly come to the conclusion that the witnesses examined by the plaintiff have duly proved the boundaries and dimensions of the suit property. Not only this, even the tenant in the shop in the suit property have been produced as witness by the plaintiff, who has categorically deposed that the suit property belongs to the plaintiff Smt. Dharamwati and that he had taken the shop on rent from the plaintiff.

Another aspect which deserve to be taken into consideration is that even the Trial Court had observed that all the earlier litigations by different persons against Smt. Dharamwati pertained to the same plot and the suit property. If so, then all the earlier suits were decided in favour of Smt. Dharamwati. Hence there can not be any dispute regarding the title or possession of the plaintiff Smt. Dharamwati over the suit property. Mere variations in dimensions and boundaries mentioned in the earlier suits can not be a ground to disentitle the plaintiff from the ownership and possession. These variations could be because of the different claims raised by different persons regarding different portions of the same suit property. It deserves to be mentioned here that the suit property is not exactly rectangular suit property. Therefore, variations of the directions or dimensions given in earlier suits can not be construed as to hold that the boundaries mentioned by the plaintiff in the present suit do not belong to her. The lower Appellate Court has rightly held that the suit property claimed by the defendant is the southern part of the same property which is claimed by the plaintiff Smt. Dharamwati.

So far as title of the defendant is concerned, his claim is only based on the decree Ex:P-13; which his vendor had got against the sons of Raghbar Dayal. No independent document of title is claimed by the vendor of the defendant Nahari. It is not even pleaded or proved by the defendant Nahari that the land purchased by him, which his vendor had got through a collusive decree; was not the same land which was earlier involved in the litigation between the Raghbir Dayal and the plaintiff Smt. Dharamwati. On the contrary the Trial Court has observed that all the earlier litigation pertained to the same property. In this situation if Raghbar Dayal had lost against plaintiff Smt. Dharamwati then Ram Sarup; who got collusive decree against sons of Raghbir Dayal; can not claim any title qua the same property on the basis of such collusive decree. Had the said Ram Sarup been the actual owner of the suit property; then he would have definitely made plaintiff Smt. Dharamwati as a party in his suit, particularly, when there have been a series of litigations, hotly contested by Smt. Dharamwati, which were filed by different persons. However, the said Ram Sarup avoided impleading the plaintiff Smt. Dharamwati as party. Hence the lower Appellate Court has rightly held that any such decree in which plaintiff Smt. Dharamwati was not a party can not affect her right, title or interest. At the cost of repetition it is to be observed that even the vendor of the defendant namely, Ram Sarup had not claimed any independent title or any document of title other than the said collusive decree. Hence the vendor of the defendant, Ram Sarup, could not have passed any title to the defendant Nahari since Ram Sarup himself had none. Merely a collusive decree to which Smt. Dharamwait is not a valid party can not be deemed to have created any valid title in favour of Ram Sarup, which is claimed by the

defendant to have been passed to him. Hence the lower Appellate Court has rightly held that the defendant has failed to prove his title over the suit property. Even regarding possession, this Court does not find any illegality or infirmity in the finding recorded by the lower Appellate Court that warrants of possession in favour of Ram Sarup, the vendor of the defendant, can not be deemed to be a validly proved document showing transfer of possession in favour of Ram Sarup and consequently, in favour of the defendant Nahari. The lower Appellate Court has rightly held that warrant of possession Ex:DW-3 has not been proved by summoning bailiff of the Court or any other official from the Court. Hence this remains a document which can not be relied upon by the Court of law.

Above all the entire case of the defendant is that he purchased the suit property from Ram Sarup son of Budhi. However, the defendant has not produced his vendor as a witness in the suit. This has prejudiced the case of the plaintiff for the simple reason that she has been denied the opportunity of cross-examining the said Ram Sarup qua his title, qua the description of the property sold by him and qua the collusion between Raghbar Dayal and Ram Sarup. The testimony of the vendor of the defendant could have been a direct and most relevant testimony. However, this witness has been withheld by the defendant, which could have been done by him only at his own peril. Therefore, the lower Appellate has rightly drawn the adverse inference against the defendant on this Count.

No other argument was raised by learned counsel for the parties.

In view of the above, finding no infirmity, illegality or perversity in the findings and the judgments and decrees passed by the

lower Appellate Court, the same are upheld and both the appeals are dismissed being devoid of any merits.

1st March, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>