

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 72 of 1996 (O&M)
Date of Decision : 15.11.2018

Karan Singh

....Appellant

Versus

Jai Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kulvir Narwal, Advocate
for Mr. Vivek Goel, Advocate
for the appellant.

None for respondents.

Surinder Gupta, J.

This is regular second appeal filed by plaintiff-appellant against judgments of Courts below whereby suit filed by him was dismissed.

2. The relief as sought by the appellant in para 11 of the plaint, as follows:-

“11. It is prayed that a decree in favour of the plaintiff and against the defendant restraining the defendant no. 1 not to interfere in the peaceful possession of the plaintiff over the gher mentioned in para 1 of the plaint with costs be passed. The plaintiff be awarded any other relief to which the plaintiff is found entitled to.”

3. It is evident from the above relief claimed by the appellant that he has confined the grant of relief of injunction only against

defendant no. 1-Jai Kaur. Admittedly, Jai Kaur, who was earlier allotted the disputed plot has been allotted another plot and she has not contested the suit of plaintiff-appellant. Learned Additional Senior Sub Judge, Bahadurgarh while dismissing the suit of plaintiff has observed in para 11 of the judgment as follows:-

“11.As per the facts on the file, sale in favour of the defendant no. 1 has already been cancelled and now she has been given plot no. 26 in lieu of the plot in dispute. Resolutions of defendant no. 2 in this regard on the file are Ex. DX and Ex. DY. Therefore, there are no chances of interfering by defendant no. 1 as alleged. No relief against defendant no. 2 has been sought. In view of my findings on the foregoing issues, the suit of the plaintiff fails and the same is hereby dismissed with costs.....”

4. Learned counsel for the appellant has argued that plaintiff has the dispute regarding the suit plot with Municipal Committee, Bahadurgarh. He has, however, on realizing lapse on the part of plaintiff in not seeking the relief of injunction against Municipal Committee, Bahadurgarh, has drawn my attention to observations of Ist Appellate Court in para 6 of the judgment and has argued that even the Municipal Committee has failed to prove its title over the suit property. It was a suit for injunction where the finding on the title of the parties was not required to be recorded. Learned trial Court discarded the evidence produced by plaintiff-appellant to prove his title over the disputed plot

and learned Appellate Court discarded evidence produced by respondent no. 2 i.e. Municipal Committee to prove its title over the plot in question. The plaintiff has led evidence to prove his title. The fact which weighed before the Courts below is that defendant no. 1, who was allotted the disputed plot was given another plot by the Municipal Committee, Bahadurgarh. The suit of the plaintiff was dismissed as he had not claimed any relief against defendant no. 2. As per findings of both the Courts below neither the plaintiff-appellant nor the defendant no. 2 is owner of suit property and defendant-respondent no. 1 has been allotted another plot and she is left with no concern with suit property. In these circumstances, it will be appropriate to allow plaintiff-appellant to file fresh suit to prove his title and possession over suit property.

5. The plaintiff has filed this suit claiming the relief of permanent injunction to restrain defendant no. 1 from interfering in his peaceful possession over the plot in dispute. The Municipal Committee, which has earlier allotted this plot to defendant-respondent no. 1, keeping in view the dispute allotted another plot to her. While learned Additional Senior Sub Judge, Bahadurgarh after taking note of certain documents has observed that defendant no. 2 has proved title over the site in dispute, the evidence of plaintiff to prove his title over it, was discarded. The Municipal Committee, Bahadurgarh has contested the claim of plaintiff on the ground that his vendor had no interest and the plot is owned by it. Learned Ist Appellate Court while looking into this aspect has observed in para 6 of the judgment as follows:-

“6. On the other hand defendant committee claims title

and possession of the suit property. The case of the defendant committee is that the property in question was purchased by the defendant committee from the custodian in 1962. DW-1 Jagdish Chand, J.E. deposes that the document Ex. D1 to D7 (objected to) relate to the properties purchased by the defendant committee from the custodian and that this includes the suit plot. However, the documents Ex. D1 to D7 are also not lawfully proved and the mere fact that these are exhibited subject to the objection would not make them to be proved. Defendant Municipal Committee has not led proper evidence. Neither the originals of D1 to D7 have been summoned nor otherwise the documents are proved, in accordance with law.”

6. The appeal filed by the plaintiff-appellant was dismissed with the observation that plaintiff has to stand on his own legs and he has failed to produce any site plan or to prove the location of the suit property. As per observations of Court below neither plaintiff has been able to prove his title over the suit property nor the Municipal Committee. While documents produced by plaintiff-appellant have been discarded on technical grounds, documents produced by the Municipal Committee have been discarded with observations that these were not duly proved.

7. In view of above facts and circumstances, finding of Additional Senior Sub Judge that plaintiff-appellant is not entitled to

relief of injunction as the same has not been claimed against defendant no. 2, calls for no interference. However, it is observed that the appellant as well as Municipal Committee, Bahadurgarh will be entitled to initiate fresh proceedings with regard to title and possession over the suit property and in the event of any such suit being filed the observations made in judgments of Courts below will have no relevance while deciding the title of the parties over the suit property.

8. This appeal stands disposed of in above terms.

November 15, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No