

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.249 of 1998 (O&M)
Date of Order:18.05.2018

Ram Narain and others

..Appellants

Versus

Munishi Ram

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kulvir Narwal, Advocate,
for the appellants.

Mr. Ram Pal Verma, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the judgment and decree passed by the learned first appellate court while reversing the judgment and decree passed by the trial court.

At the time of admission, this court had framed the following substantial question of law:-

“Whether the plaint suit can be decreed on the ground that the defendants failed to prove the title of the suit property when there is no documentary evidence of title on behalf of the plaintiffs?”

Plaintiff Munshi Ram filed a suit for declaration with consequential relief of possession asserting that late Sh. Arjan son of Sh. Kure was inducted as licensee in the property in dispute 8 years back.

However, after the death of Arjan, his legal representatives i.e. defendants

no.3 to 6 have sold the property and delivered possession to defendants no.1 and 2, vide registered sale deed dated 27.08.1990.

Defendants no.1 and 2 and defendants no.3 to 6 separately filed their written statements and contested the claim of the plaintiff.

Learned trial court after appreciating the evidence available on the file, recorded a finding that the plaintiff has failed to prove its case as no evidence of title has been proved. The court further noticed that the conduct of the plaintiff is not above board. The court further noticed that when Ram Richhpal, PW3 admitted that defendnat no.3 Chander Singh, who is aged about 40 years, was born in the property when he appeared as a witness. He further went on to admit that Arjan was the owner of the house and after his death his legal representatives have succeeded to him. With these findings, suit filed by the plaintiff was dismissed.

First appeal preferred by the plaintiff before the learned first appellate court was accepted and the learned court without referring to the evidence available on the file, proceeded to examine that whether Arjan was original resident of the village or not and on the aforesaid basis, the court reversed the findings of the trial court on the ground that the defendants failed to prove their title in the property.

Now the stage is set for considering the questions of law.

QUESTION:-

“Whether the plaint suit can be decreed on the ground that the defendants failed to prove the title of the suit property when there is no documentary evidence of title on behalf of the plaintiffs?”

It is well settled that the plaintiff has to stand on his own legs.

It is further well settled that the plaintiff who claims to be the owner of the property and seeks possession must prove his title before the defendants is

called upon to prove his title. In the present case, no evidence has been produced by the plaintiff except statement of 4 witnesses, out of them one was Raj, Draftsman. Statement of Ram Richhpal, PW3 has been discussed in the foregoing paragraphs, who admit that Arjan was the owner of the property and Chander singh i.e. Defendant no.3 was born in the property and is of 40 years old now.

In view of the aforesaid evidence, in the considered opinion of this court, suit filed by the plaintiff could not be decreed by the first appellate court. The first appellate court clearly erred in shifting the onus on the defendants without calling upon the plaintiff to first discharge the onus to prove his ownership. In a suit for declaration with consequential relief of possession which is filed on the basis of ownership, it was the duty of the plaintiff to prove that fact by leading cogent evidence.

Learned counsel for the respondent submitted that since the property in dispute is situated within abadi, therefore, no revenue record is available. He submitted that only oral evidence could be lead.

In the considered opinion of this court, the argument is only partially correct.

No doubt, revenue record of the plots situated in the abadi is not maintained by the revenue officials. However, neither the plaintiff produced any other evidence to prove that they were ever in possession of the property by producing ration card, electricity bill, chuhla tax or any other documents nor any effort was made by the plaintiff to lead any other evidence.

In view of the aforesaid discussion, the question of law framed earlier is answered in favour of the appellants. The judgment and decree

passed by the learned first appellate court is set aside and that of the trial court is restored.

The Regular Second Appeal is allowed.

May 18, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No