

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.150 of 2005 (O&M)

Date of Decision: March 19, 2018

Rajinder Singh (since deceased) through L.Rs

...Appellants

Versus

Tara Bai (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.G.S.Jaswal, Advocate,
for the appellants.

Mr.R.K.Hooda, Advocate,
for respondent Nos.1, 2, 3(i) & (iii).

Mr.Nipun Verma, Advocate,
for respondent No.3(ii).

AMIT RAWAL, J. (Oral)

The appellants, who are the legal representatives of defendant No.1 Rajinder Singh, are in Regular Second Appeal against the judgment and decree dated 23.11.2002, whereby the suit of respondent-plaintiff Tara Bai (since deceased) now represented by her legal heirs, was, in part, decreed and defendant No.1 was enjoined not to interfere into possession of the plaintiff over the portion of the house in dispute other than the portion shown in yellow colour in the site plan Ex.P2 forcibly and illegally and the judgment and decree dated 31.7.2004, whereby the appeal preferred by defendant No.1 against the aforementioned judgment and decree, was dismissed by upholding the judgment and decree of the trial Court.

Plaintiff-Tara Bai instituted the suit seeking injunction against

the defendants from interfering in her possession over the house in dispute bearing Municipal Unit No.U-375 as shown in red colour and marked by letters ABCD in the site plan, situated at Gali Kumharan, Bhanshi Pana, Lohar Bhiwani and from alienating any part of the house in dispute in any manner on the premise that she was owner in possession of the aforementioned property, whereas defendant Nos.2 and 3 along with defendant No.1 intended to interfere and dispossess the plaintiff. Defendant No.1 had no right, title or interest in the suit property.

The aforementioned suit was contested by defendant No.1, who filed the written statement and took the objections qua locus-standi and maintainability. On merits, it was stated that the suit had been filed by the plaintiff in connivance with defendants No.2 and 3, whereas defendant No.1 was the exclusive owner in possession of the house in dispute and constructed the same in the year 1961 after getting the site plan sanctioned from Municipal Council, Bhiwani. The site plan was prepared by Karan Singh, Naqsha Navis. Then he left Bhiwani and started residing in Village Khurja, District Buland Shahar (Uttar Pradesh). The plaintiff was the wife of his brother and defendant Nos.2 and 3 was the real nephew. The Kotha towards northern-western corner of the house in dispute was given by him to Mahender Singh, husband of the plaintiff for residential purposes and it was agreed that he would vacate the kotha as and when asked. The electric meter, water supply connection and sewerage connection were also in his and in the name of family members.

Defendants No.2 and 3 appeared and filed separate written statement and admitted the claim of the plaintiff.

The trial Court, on the basis of the pleadings of the parties,

framed the following issues:-

- a) *Whether the plaintiff is owner in possession of the disputed property? OPP*
- b) *If issue No.1 is proved, whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- c) *Whether the plaintiff has no cause of action to file the present suit? OPD*
- d) *Whether the plaintiff is estopped by his own act and conduct from filing his suit? OPD*
- e) *Whether the plaintiff has no locus standi to file the present suit? OPD*
- f) *Relief.*

Plaintiff Tara Bai, during the course of proceedings, died and her legal representative Nagender Singh was brought on record. Nagender appeared in the witness box as PW1 and also examined PW-2 Gokal Numberdar of the village and thereafter the evidence was closed by Court order. On the other hand, defendant No.1 examined Karam Singh, Naqsha Navis as DW-1, Hari Ram, Building Inspector Municipal Council, Bhiwani DW-2 and Om Parkash, Clerk HSEB, Bhiwani as DW-3 and himself appeared as DW-4. The suit and the appeal were decided in the aforementioned manner.

Mr.G.S.Jaswal, learned counsel appearing on behalf of the appellants submitted that the findings of the trial Court according status to the plaintiff in an injunction suit is not permissible in the absence of any declaration. In support of his contention, he relied upon the judgment rendered by this Court in **Madan Mohan Versus Arun Kumar, 1984 PLJ**

239 to contend that relief of declaration is inherent in injunction.

The only point to be determined by the Courts below was with regard to the possession in respect of the suit property as depicted in the site plan Ex.P2. The plaintiff has not been able to show her exclusive possession. The evidence of the aforementioned witnesses was discarded, whereas the voter list and electricity connection have been brought on record to establish the possession over the suit property. The relationship between the parties had also not been denied. There has been misreading of the evidence as the electricity connection pertained to the same very disputed property. All these factors have not been looked into by the Courts below in the correct perspective and, therefore, there is abdication, much less perversity.

Mr.R.K.Hooda, learned counsel appearing on behalf of respondents Nos.1, 2, 3(i) and (iii) submitted that the Courts below had given a finding of ownership on the premise that the assessment register brought on record established not only the possession of the plaintiff, but as well as enabled the Court to form an opinion regarding the ownership and that could not be determined that too at that stage.

The witnesses of the appellants have not been able to connect the documentary evidence with the suit property. The voter list was also pertaining to some other property, whereas the ration card was in the names of Rajender Singh and Ramawati. All these factors had weighed in the mind of the Courts below and, thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

The facts narrated above were not in dispute. Only two

questions are to be determined by this Court (1) whether in the absence of any declaration in a suit for injunction, Court can accord the status of ownership to the plaintiff and; (2) whether in the absence of any declaration, the finding of the Court was required to be confined to injunction only. For appreciating the aforementioned controversy, it would be in the fitness of things to notice the record. The record brought on record, i.e., the assessment register showed the possession of the plaintiff over the suit property. It is settled law that the assessment register does not confer any ownership. The aforementioned view of mine is derived from the ratio decidendi culled out in **Raj Kumar Versus Hardit Singh (deceased) through L.Rs, 1993 (3) PLR 364.**

Now coming to the other question with regard to according the status of ownership to the plaintiff in an injunction suit. I am of the view that the whole genesis of the findings had been on the basis of the assessment register, which is not the conclusive piece of evidence of title. The Court, thus, was swayed away in according the status of title on the basis of the assessment register as in the suit for injunction, only possession has been sought and not the title.

Since the Court had granted the injunction against the defendants with regard to interference in the possession of the plaintiff over the portion of the house in dispute except the portion shown in yellow colour in the site plan for which the appeal has not been filed as admitted by Mr.Hooda, I am of the view that the injunction granted by the Courts in favour of the plaintiff (since deceased) now represented by legal representatives, is perfectly legal and justified and does not call for any interference.

The appeal with the aforementioned modification, while upholding the findings of injunction, is disposed of.

As the appeal stands disposed of, no separate order is required to be passed on Civil Misc.Applications No.3226-C of 2015 and 3437-C of 2013.

March 19, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No