

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

Regular Second Appeal No. 334 of 2011(O&M)

Date of Decision: December 21 , 2018.

Rewati Devi and others

..... APPELLANT (s)

Versus

Ram Kumar and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Anil Chawla, Advocate and
Mr. Prateek Mahajan, Advocate
for the appellants.

Mr. J.P.Sharma, Advocate
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been preferred by the appellants (legal representatives of the plaintiff) being aggrieved of judgments and decrees dated 31.05.2007 and 17.11.2010 passed by the learned Additional Civil Judge (Senior Division), Narnaul and the learned District Judge, Narnaul, respectively, whereby suit for permanent injunction filed by the plaintiff was dismissed.

Brief facts necessary for adjudication of the case are that, a suit for permanent injunction was filed by the plaintiff – Lal Chand for restraining the

defendants/respondents from interfering in his peaceful possession over the Ahata known as Bagichi as described in the plaint. It was pleaded that defendant No.1 was encroaching upon the land in dispute. During pendency of the suit, construction was claimed to be raised by the said defendant under the garb of sale-deed dated 25.05.1997 allegedly executed by defendant No.2 -Jeevan Ram in favour of defendant No.1 -Ram Kumar. It was further prayed that as construction was raised by defendant No.1 during pendency of the suit after encroaching upon the land in dispute, the suit be treated as suit for possession and demolition of the construction was also sought.

Joint written statement was filed by the defendants while denying that the land in dispute was ever referred to as 'Bagichi'. It was contended that sale-deed dated 25.05.1997 was duly executed in favour of defendant No.1 by defendant No.2. Plaintiff or his father, it was claimed, never remained in possession of the land in dispute. Defendant No.1 stated that he had every right to raise construction over the property in dispute being purchaser of the same from its rightful owner. Dismissal of the suit was prayed for. Replication was filed.

From pleadings of the parties, following issues were framed by the learned trial court:-

1. Whether the plaintiff is owner of the suit property detailed in head note of the plaint? OPP
2. Whether sale deed dated 25.05.1997 executed by defendant No.2 in favour of defendant No.1 regarding part of the suit property is mentioned in para No.2 of the suit is null, illegal and void? OPP
3. Whether during pendency of the suit, defendant No.1 has taken forcible possession of the suit property and has raised construction thereon? OPP
4. Whether the suit is not maintainable in the present form? OPD

5. Whether the plaintiff is entitled to decree for possession? OPP
6. Whether the plaintiff is estopped to file the present suit due to his own act and conduct? OPD
7. Whether the plaintiff has no locus standi to file the present suit? OPD
8. Whether the suit is barred by limitation? OPD
9. Whether the suit is false and frivolous and defendants are entitled to special costs? OPD
10. Relief.

Evidence was led by both the parties in support of their respective stands.

Learned trial court on appreciation of the facts and evidence on record concluded that the plaintiff failed to prove his possession over the suit property being owner thereof, whereas defendant No.1 had duly proved registered sale-deed dated 25.05.1997. Suit filed by the plaintiff was thus dismissed. Appeal filed by the plaintiff through his legal representatives was also dismissed by the learned District Judge, Narnaul. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that possession of the plaintiff over the demised property is duly proved by the evidence on record. As per report dated 26.08.1998 submitted by the Local Commissioner, it is apparent that there was no construction which stood raised on the suit property at the time of inspection. Furthermore, in various litigations prior to the present one, the the plaintiff is duly reflected as owner of the disputed property. It is vehemently argued that finding of the learned First Appellate Court to the effect that construction over the property could not have been raised so soon during the pendency of the suit, is belied by the Local Commissioner's report wherein it is specifically mentioned that there was no

construction over the suit property. It is submitted that the plaintiff proved on record as many as three different suits regarding the property in question to indicate that the plaintiff-Lal Chand was the owner of this property. Therefore, both the learned courts below have grossly erred in dismissing the suit filed by the plaintiff. It is thus prayed that this appeal be allowed and the impugned judgments and decrees be set aside and suit filed by the plaintiff/appellants be decreed throughout.

Learned counsel for respondent No.1 has refuted the argument raised on behalf of the appellants and submits that none of the litigations sought to be relied upon by the appellants proved the plaintiff -Lal Chand to be the owner in possession of the property in question. Possession of the plaintiff/appellants over the suit property, it is submitted, is not proved by any evidence on record. Local Commissioner's report merely by virtue of a mention that there is no construction (though the same is denied) cannot prove the plaintiff's possession over the suit property. It is thus prayed that the impugned judgments and decrees be upheld and this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the file.

Plaintiff/appellants claimed ownership over the suit property while alleging the property to be inherited by the plaintiff from his ancestors. The plaintiff himself stepped in the witness box and was examined as PW2. He paradoxically stated that the suit property was purchased by his father Binja Ram. It is further stated by PW2 that as per the record of the Municipal Committee, Narnaul he is reflected to be the owner of the suit property.

Furthermore, reliance is placed by the plaintiff/appellants upon three different civil suits in respect to the same alleged property. First suit was filed by Lal Chand against one Kushal Chand for restraining him from opening some door/window over the suit property. The said civil suit is stated to have been dismissed as an amicable settlement was arrived at between the parties. Admittedly, final order of this civil suit is not on record, neither is the nature and manner of compromise, if any, on record. Ex.P1 is a copy of the plaint of suit filed by the plaintiff against Kushal Chand and Ex.P2 is the site plan which relates to the said suit No.144 of 1983. There is indeed no evidence forthcoming from these documents in regard to the suit property to prove that the plaintiff Lal Chand was the owner in possession of the property in question. The second suit is allegedly filed by Narotam Parshad against Lal Chand seeking to restrain Lal Chand from raising construction over the property in question. The said suit was dismissed on 15.02.2001, but again final order/copy thereof has not been proved on record. Ex.PX1 is a copy of order dated 16.04.1993 passed by the learned trial court in civil suit No.87 of 1993 filed by Narotam Parshad. Parties in the said suit are admittedly different. The third suit No.323 of 2002 allegedly for permanent injunction by one Narotam Parshad against the plaintiff as well as the counter-claim by the present plaintiff is stated to have been dismissed on 25.02.2010. Yet again, there is no evidence on record to prove the plaintiff – Lal Chand to be owner in possession of the property in question in the said litigation. Relevant documents pertaining to the said civil suits which may have shed any light on the pleaded facts in this case are conspicuous by their absence.

Except for reference to the said litigation, plaintiff has not proved on record any

document to support his title or possession over the suit property. There is no evidence on record to even show the title or possession of plaintiff's father or his forefathers as claimed.

To the contrary, defendants have duly proved on record the execution of the registered sale-deed dated 25.05.1997 and photocopy of the site-plan as Ex.DW1/B duly sanctioned by the Municipal Committee, Narnaul in favour of defendant No.1 – Ram Kumar.

It is clearly observed by the learned trial court that the situation and side as shown in the site plan (Ex.DW1/B) substantially tallies with the site-plan (Ex.PX5) submitted by the Local Commissioner. It is relevant to note at this stage that no objections were filed to the report of the Local Commissioner by either of the parties. Defendants have also proved on record the sanctioned domestic water connection (Ex.DW2/A) and Public Health Department receipts (Ex.DW2/B and Ex.DW2/C) in favour of defendant No.1. There is no merit in the argument raised on behalf of the appellants that the said documents should be discredited as they were admittedly issued during the pendency of the suit. This is so for the reason that sale deed (Ex.DW4/A) is duly proved on record. There is no evidence on record to prove the plaintiff to be the owner in possession of the suit property. Construction was raised by defendant No.1 after the plans were duly sanctioned by the Municipal Committee, Narnaul. There is not an iota of evidence on record to prove that the plaintiff was forcibly ousted from the possession of the property in question during pendency of the suit.

Learned counsel for the appellants is unable to point out any question of law much less substantial question of law which may be involved for

consideration in this regular second appeal. Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 31.05.2007 and 17.11.2010 passed by the learned Additional Civil Judge (Senior Division), Narnaul and the learned District Judge, Narnaul, respectively, which calls for interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

(**LISA GILL**)
JUDGE

December 21 , 2018.
'om'

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