

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

RSA No.228 of 2012 (O&M)

Date of Decision: 13.08.2018

Hem Chand and others

..... Appellants

Versus

Hardei and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.K. Chibbar, Sr. Advocate with
Mr. Saurabh Arora, Advocate
for the appellants.

Mr. Jagdish Manchanda, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit filed by the respondent-Hardei for grant of permanent injunction and dismissing the counter claim filed by the defendants-appellants for decree of mandatory injunction directing the plaintiff to hand over vacant possession of the premises in question. This Court vide judgment dated 18.09.2015 decided the appeal while reversing the judgment and decree passed by the Courts below. However, the Hon'ble Supreme Court while deciding Civil Appeal No.89 of 2018 on January 08, 2018 remanded the case to this Court for re-decision. The operative part of the order passed by the Hon'ble Supreme Court is extracted as under:-

“On a careful perusal of the judgment of the High Court, we find, it has not really stated, how the findings are perverse. The

analysis, as is demonstrable proceeds on scrutinizing many issues, which is in the realm of total re-appreciation of evidence. There is distinction between “perversity” and engaging in re-appreciation of evidence in entirety.

In view of the aforesaid, we are inclined to allow the appeal, set aside the judgment and decree passed by the High Court in RSA No.228 of 2012 (O/M) dated 18.09.2015 and remit the matter to the High Court to decide the Second Appeal afresh within the parameters of Section 100, Code of Civil Procedure. Ordered accordingly. Needless to say, there has been no expression of opinion on the merits of the case. There shall be no order as to costs.”

The plaintiff-respondent Hardei claimed that she is owner in possession of land measuring 800 sq. yards on which three thatched huts have been fabricated being ancestral property situated in the residential area of village Tilpat, Faridabad. The plaintiff claimed that she is a poor widow and the property is being used for residence and for triggering cattles. The defendants contested the suit and pleaded that the plaintiff, her husband, her father-in-law all are residents of Uttar Pradesh and migrated to State of Haryana only 15-16 years back. It is further pleaded by the defendants that plaintiff being poor lady was permitted to reside in the plot in question. A writing was also executed permitting her to stay for a period of 11 months while writing dated 29.09.1994 thumb marked by the plaintiff.

Both the Courts after appreciating the evidence available on the file decreed the suit for injunction although while recording finding that the plaintiff has failed to prove that the property is her ancestral property. The Courts granted a decree for permanent injunction in her favour. However, while dealing with the counter-claim, the Courts have held that the defendants-appellants have failed to prove their ownership and have

also failed to prove their writing dated 29.09.1994 and hence, the counter-claim was dismissed. It may be noted here that the learned trial Court as well as the First Appellate Court after discussing evidence available on the file have held that the stand taken by the defendants-appellants that the plaintiff, her husband and father-in-law came from State of Uttar Pradesh only 15-16 years back, is incorrect. It has been found on examination of evidence particularly voter list, ration card, evidence of ration purchased and chulha tax paid that the plaintiff and her husband are recorded as voters and residents of the village for the last more than 20 years. Ex.PW-10/2, 10/3, 10/4, 10/5 and 10/7 are copies of the voter list which prove that the plaintiff, her husband and other family members are registered voters in the village. Still further, Courts have relied upon evidence of PW-3 Rambir who has stated that since 1992, the plaintiff has a ration card and she used to buy ration from his ration depot. Rambir runs a fair price shop in the village. He has also proved that as per register, the plaintiff is registered at serial No.365. Further PW-6 Inder Pal Gaur has proved that in 1997 Hardei-plaintiff applied for an electric connection which was allotted to her in the year 1997.

Learned counsel for the appellants-defendants could not point out any evidence which may prove that the defendants are owners of the property. The defendants-appellants further could not point out any evidence which proves that the plaintiff was permitted to reside on the land in question and constructed thatched huts by the defendants. The writing dated 29.09.1994 has not been proved on file.

No doubt, in abadi (residential area of the village) which is within the red line (lal laqir), no document of title is available. Therefore,

the Court is left with whatever evidence is available on the file. The defendants-appellants failed to produce and prove that before the plaintiff occupied the land, they were in possession of the property. The defendants-appellants further failed to prove that they had permitted the plaintiff to put and construct/fabricate thatched huts.

Although, Hon'ble Supreme Court while remitting the matter back to this Court had directed to decide the appeal afresh within the parameters of Section 100 of the Code of Civil Procedure, however, it must be noticed that the regular second appeals in the territory of Punjab, Haryana and Chandigarh are being decided as per Section 41 of the Punjab Courts Act, 1918. Recently, a Constitution Bench of the Hon'ble Supreme Court in the case of Pankajakshi (Dead) through LRs Vs. Chandrika and others, (2016) 6 SCC 157 have held that Section 41 of the Punjab Courts Act would govern the regular second appeals in the Punjab and Haryana High Court and not Section 100 of the Code of Civil Procedure.

In the grounds of appeal, counsel for the appellants has proposed the following substantial question of law:-

“(a) Whether, once the plaintiff failed to prove its legal possession, an injunction can be granted to it?

(b) Whether the copies of Voters List, Identity Card, Ration Card and Entry of Chulha Tax are sufficient to prove possession of the plaintiff, more so when the said documents do not connect with the suit property?

(c) Whether both the Courts below have committed a patent mistake apparent on record while relying upon the copies of Voters List, Identity Card, Ration Card and Entry of Chulha Tax so as to hold that the plaintiff is in possession of the suit property?

(d) Whether, once the concurrent finding of fact recorded by both the Courts below is that the plaintiff is not owner of the property,

the Courts below have committed an illegality while granting injunction to the plaintiff?

(e) Whether once it has been proved and admitted by the plaintiff that part of the property was purchased by her husband Budhan, the same was sufficient to hold that the appellants are owner of the suit property?

(f) Whether the document Mark-A, a copy of Writing granting licence to the plaintiff to reside in the property for 11 months has wrongly been discarded by the Courts below, more particularly when the appellants were granted permission to lead secondary evidence to prove the said document and the appellants led sufficient evidence to prove that document?

(g) Whether the plaintiff has to stand on its own legs and the finding of the learned Court that appellants have not produced anything in rebuttal so as to show that copies of ration card, voter list and entry of Chulha Tax as well as photographs are contrary to settled law?"

Learned senior counsel appearing for the defendants-appellants at the time of arguments did not address any argument on the substantial question of law proposed in the grounds of appeal. Learned counsel has time and again drew attention of the Court to lay-out plan produced by the parties to establish his title. Learned counsel submitted that a bare look at Ex.PW-8/1, it is apparent that the property is in two parts. One part is containing three thatched huts whereas second part is being used for tithering cattles. He submitted that by merely tithering cattles, one cannot claim exclusive possession of the property. He further drew attention of the Court to Ex.D-1, another lay-out produced by the defendants wherein it has been pointed out that thatched huts are only on the eastern side of the property whereas the remaining is only used for tithering cattles. Learned counsel submitted that 3000 bricks of the defendants-appellants namely Hem Chand are stored in the property in dispute. Learned counsel further

referred to another lay-out plan Ex.DW-6/P to show that the huts of the plaintiff-respondent are in the one corner.

In the considered view of this Court, such documents namely lay out plans cannot be evidence of title of the property. The defendants-appellants are seeking possession by way of mandatory injunction on the basis of their title. In absence of any proof/evidence of title, suit (counter claim) filed by the defendants-appellants cannot be decreed. The possession of the plaintiff-respondent is not disputed.

Still further, learned senior counsel has drawn attention of the Court to Ex.DW-7/A, a certificate issued by Akhil Bhartiya Gram Panchayat Pradhan Sangthan Block Dhankor (Bulandshahar) dated 17.09.1997 to prove that husband of the plaintiff and her family are in owners of 100 sq. yards plot in Dhankor. Learned senior counsel has submitted while relying upon the aforesaid document that the plaintiff is original resident of Uttar Pradesh and therefore, the case set up by the defendants-appellants is proved. Although, the writing dated 29.09.1994 is not proved on file, however, learned counsel while referring to the aforesaid writing which is marked 'A' has submitted that she has admitted that small part of the plot was permitted to be used by the defendants to the plaintiff and therefore, such writing proves the case of the defendants-appellants.

It will be noted that in abadi or extended abadi of a village, proprietors as well as non-proprietors are permitted to reside. Whenever there is shortage of space for residence, the abadi area of the village is increased which is called extended abadi. However, the proprietors cannot claim exclusive right over the abadi area. The abadi as noted above is also for residence of non-proprietors of the village including carpenters,

sweepers, farm labourers etc. In the context of present case, it is sufficient to note that the possession of the plaintiff is not being disputed. On the other hand, the ownership of the defendants-appellants has been disputed. It is for the defendants-appellants to lead evidence and prove that fact which they have miserably failed.

In view of the aforesaid discussion, this Court does not find any good ground to interfere in the concurrent finding of fact arrived at by the Courts below which is neither shown to be perverse nor result of misreading or non-reading of the evidence available on the file.

Appeal is dismissed.

13.08.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No