

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1848 of 2013 (O&M)

Date of Decision: 24.07.2018

Prem Kumar

..... Appellant

Versus

BBF Industries Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. B.R. Mahajan, Sr. Advocate with
Mr. Prateek Mahajan, Advocate and
Mr. Sunil Sharma, Advocate
for the appellant.

Mr. P.S. Khurana, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court vide which the suit filed by the plaintiff on the basis of title for possession of property No.BXXX 1505/03-A measuring 1013 square yards was decreed.

Question of law which needs determination is:

“Whether after the property comes within the municipal limits described by the municipal property numbers, sold and purchased with specific boundaries and length and breadth of the property, the concept of co-owner/co-sharer on the basis of joint khata in the revenue record survives or not?”

FACTS

Plaintiff filed a suit for possession of property referred to above measuring 1013 sq. yards on the basis of title claiming that he has purchased the property from Kulbir Singh son of Harnam Singh through sale deed dated 28.05.1985. It was specifically pleaded in the plaint that the aforesaid property purchased was consisting of one room and 4 walls bounded as under:-

“East : Kulwant Rai 120’

West : Street : 120’

North : Street : 78’

South : Neighbour : 74’”

No doubt, reference was further given that the property is comprised in khasra No.6/24 khewat khatauni No.8/10 as per the Jamabandi for the year 1978-79. The plaintiff asserted that since he is resident of a different city, therefore, the defendant taking advantage of his absence has entered into a illegal possession of the property and trying to raise certain construction.

The defendant contested the suit and pleaded that the suit is bad for non-joinder of necessary parties as Khasra No.6/24 comprises of 8 kanal land out of which defendant has purchased only 6th share out of 160 shares and other owners have not been impleaded as party.

In other words, the defendant claimed that it has purchased only 6 marla of land (180 sq. yards approximately) out of Khasra No.6/24. In para 4-J of the preliminary objections, it was pleaded that Kulwant Rai had sold the property to Pritam Singh vide sale deed dated 08.03.1982 whereas Pritam Singh sold the property to Kulbir Singh vide sale deed dated 09.11.1982 and Kulbir Singh in-turn sold the property to the plaintiff-

Hira Lal vide sale deed dated 28.05.1985. The defendants also claimed that they have purchased the property from Jaswant Rai, Ved Parkash vide sale deed dated 20.08.1987 and they are not in unauthorized possession and their possession is pursuant to the aforesaid sale deed.

Learned trial Court after appreciation of evidence decreed the suit filed by the plaintiff after finding that the plaintiff title as well as previous possession is proved from demarcation of the area carried out by the revenue official on 20.08.1987 and further, established from the report of the Local Commissioner dated 03.04.1989 appointed during pendency of the suit. Learned First Appellate Court primarily reverse finding of the learned trial Court on the ground that the parties have purchased the property from a joint khewat and therefore, every owner has become co-sharer and hence, the remedy for the plaintiff-appellant is to file a suit for partition. Learned First Appellate Court has also made certain observations regarding conduct of the plaintiff-appellant which in the considered opinion of this Court is not relevant for the decision of the present appeal, however, briefly being noticed.

(i) Why the plaintiff got demarcation of the property in dispute after about 2 years from the date of purchase of the property (reference is to the demarcation got carried out in the year 1987).

(ii) How it is possible that Pritam Singh handed over the possession of the property in which he was not in possession to Kulbir Singh and Kulbir Singh in-turn had handed over the possession to the plaintiff.

At this stage, it will be noticed that the description of the

breadth and width of the property purchased by the plaintiff and his predecessor and predecessor of the predecessor and the report of the Local Commissioner with respect to the property in dispute as also the description of the property by the revenue official while carrying out demarcation in the year 1987 are exactly same. The lay out plan prepared by the Local Commissioner in the year 1989, revenue official who carried out demarcation in the year 1987, lay-out plan attached with the sale deed and the plaint depicting location of the property purchased are also exactly the same. Towards West and North of the property in dispute, it is apparent that the property in question is having two streets on the West side and on the North side.

It would be further significant to notice that the defendant-respondent has purchased the property through 4 different sale deeds. All the four sale deeds which are Ex.DC/1 to Ex.DC/4 are also referring to different Municipal numbers with length and width of the property purchased and the properties purchased are identified by the properties surrounding on all four sides. These boundaries as given in the aforesaid sale deeds are as under:-

“Ex.DC/1

*Sale deed dated 20.08.1987 for 482 sq. yards by Ved Parkash
favour of Krishna Rani*

North Rajender Kumar etc. 34 feet 9 inch

South Krishna Rani & neighbour 47 feet 6 inch + 12 feet 19 feet

East Parksh Chand & Ram Rakhi 32 feet+16 feet 10 inch+60 ft.

West 20 feet street & Kamlesh 20 feet+40 feet+60 feet

Khasra No.6//15/1/1, 6//24, 6//17, 6//25/1, 6//16/1, 6//14

Ex.DC/2

Sale deed dated 20.08.1987 for 140 sq. yards by Ved Parkash

favour of Satpal

North Sat Pal 47 feet 6 inch

South Khasantipal 48 feet

East Sat Pal 12 feet 8 inch

West 20 feet street 30 feet

Khasra No.6//15/1/1, 6//24, 6//17, 6//25/1, 6//16/1, 6//14

Khata No.155/162, 8/11, 9/11, 12, 742/767, 371/381 as shown in site plan.

Ex.DC/3

Sale deed dated 20.08.1987 for 287 sq. yards by Jaswant Rai favour of Kamlesh Kumari

North Rajender Kumar 43 feet 3 inch

South Sat Pal 43 feet 3 inch

East Sat Pal 60 feet

West 20 feet street 60 feet

Khasra No.6//15/1/1, 6//24, 6//17, 6//25/1, 6//16/1, 6//14 as shown in site plan.

Ex.DC/4

Sale deed dated 20.08.1987 for 288 sq. yards by Jaswant Rai favour of Rajender Kumar and Vijay Kumar

North 20 feet street 78 feet

South Kamlesh Kumari 78 feet

East Ram Rakhi 33 feet 9 inch

West 20 feet street 33 feet 9 inches

Khasra No.6//15/1/1, 6//24, 6//17, 6//25/1, 6//16/1, 6//14 as shown in site plan.”

The defendant has purchased through different four sale deeds, the properties bearing municipal numbers BXXX 4127, 4128, 4129 and 4129/1.

It would be apparent from the careful examination of the description of the properties surrounding on all four sides that the property purchased by the defendant was located at a different location as in all

these sale deeds, 20 feet wide street is shown on the West side and there is no street on North side whereas it is undisputed that the property claimed by the plaintiff is having two streets on Northern and Western side.

As noticed earlier, the property which has been purchased by the plaintiff as also the defendant is assigned municipal property numbers and the sale deeds are with regard to specific plot giving not only size of the plot but the length of each are on all the four sides of the plot.

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

The concept of joint khata and the different owners being co-owner are primarily in the plain land normally use for agricultural purposes. No doubt, there can be co-sharers/co-owners in the property which is having a specific boundary but that will be entirely in the different context. Once the property has been divided into plots and comes within urban area, the concept of joint ownership with reference to a khewat would cease to exist because the joint khata has been partitioned by the owners and now the property is being dealt with specific boundaries by giving reference to property situated on all four directions i.e. surrounding properties. The plots have been assigned municipal numbers.

Learned First Appellate Court committed an error in treating everyone who has purchased the property to be a co-owner. Once it is established that the property has been partitioned by the owners and converted into plots, the concept of co-ownership in a joint khata cannot be invoked to hold that the parties are joint owners.

Hence, the question as framed earlier, is also in favour of the plaintiff-appellant. However, there are certain other issues which have been argued and required to be answered.

Learned counsel for the respondent has heavily relied upon the previous judgment passed by the Court on 09.01.1984 in which Kulwant Rai and Pritam Singh were party defendants. The suit was filed by Satpal, the defendant of the vendor against Jaswant Rai and Ved Parkash, vendors of the defendant. In the aforesaid suit, Kulwant Rai and Pritam Singh were also party defendants. The aforesaid suit was for decree of permanent injunction restraining the defendants in the suit from interfering in lawful possession of plaintiff regarding plot measuring 1036 sq. yards comprised in rectangle No.6, Khasra No.14, 16/1, 24, 17, 25/1, 27, rectangle No.5 Khasra No.20. On careful examination of the aforesaid decree which was ex parte decided shows that identity of the property viz-a-via the property in dispute cannot be concluded by the Court. In the aforesaid suit, neither boundaries of the plot has been given nor the property surrounding on all four directions have been given.

Learned counsel for the respondent submitted that once there is a finding in the ex parte judgment that Satpal was in possession who was vendor of the defendant, therefore, the aforesaid finding is final and hence, the suit for possession is not maintainable. On careful examination of the aforesaid argument, this Court does not find any force in the submission for the obvious reason that the aforesaid judgment dated 09.01.1984 does not specify the plot which was in dispute either by giving its length of the arm of all four sides and description of the property on all four directions. Still further, it will be noticed that the aforesaid injunction suit was for 1036 sq. yards plot whereas the property purchased by the defendant when totalled comes to 1197 sq. yards and the present suit is filed for 1013 sq. yards plot.

Learned counsel for the respondent further argued that once the

defendant has also purchased some share in the land comprised in khasra No.24, everyone becomes co-sharer. The argument is just to be noticed and rejected in view of the answer given by this Court while answering given in the question of law.

Next argument of learned counsel is that the plaintiff has failed to prove that when the defendant dispossessed the plaintiff. In the considered opinion of this Court, in 1987 when the demarcation was carried out by the revenue official, the plaintiff was in possession of the property. It is the assertion of the plaintiff that he is living in a different city, therefore, unauthorized possession was taken over by the defendant somewhere in the year 1989 and the plaintiff when came to know filed the suit on 29.03.1989. When Local Commissioner appointed by the Court visited the site on 03.04.1989, it was found that the defendant was carrying out certain construction as alleged by the plaintiff in the plaint. In such circumstances, there is no force in the argument of learned counsel for the respondent. In any case, once the plaintiff has proved his title, his suit for possession has to be decreed unless the defendant proved that it has perfected his title by way of adverse possession which is not the case pleaded or proved by the defendant.

In view of the aforesaid discussion, the judgment passed by the learned First Appellate Court is set aside and the judgment passed by the learned trial Court is restored by accepting the present appeal.

Regular Second Appeal is allowed.

24.07.2018

Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No