

204.

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

RSA-2314-2013 (O&M)

Date of decision:05.04.2018.

CHUNNI LAL

... Appellant

Versus

RANJIT SINGH AND ORS.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Gurmeet Singh, Advocate,
for the appellant.

Mr. Munish Gupta, Advocate,
for respondents No.1 to 3.

HARI PAL VERMA, J.

Appellant-defendant (hereinafter called as 'defendant') has filed the present Regular Second Appeal against the judgment and decree dated 01.04.2013 passed by learned Additional District Judge, Hoshiarpur, whereby his appeal against the judgment and decree dated 11.08.2010 passed by learned Civil Judge (Senior Division), Hoshiarpur, was dismissed.

The trial Court, vide judgment and decree dated 11.08.2010, decreed the suit of the respondent-plaintiffs (hereinafter called as 'plaintiffs') for permanent injunction and had restrained the defendant from taking forcible possession of plot bearing Khasra No.101/1(0-11), Khewat No.342, Khatauni No.458 marked as BEFGDC and shown as red as detailed in the site plan attached with the plaint.

Briefly stated, the plaintiffs had filed a suit for permanent injunction restraining the defendant from taking forcible possession of plot, as detailed in the headnote of the plaint, and also to restrain him (defendant)

from changing its nature and possession. As per the plaint, the suit property was allotted to Ujjagar Singh son of Harnam Singh way back in the year 1959-60 for abadi purposes in the consolidation proceedings. Ujjagar Singh was put in possession of the plot and he remained in possession. However, after his death, the plaintiffs, who are the legal heirs of Ujjagar Singh, continued in possession of the property, but as the defendant tried to interfere in the possession of the plaintiff over the suit property, plaintiff No.1-Bishan Kaur (widow of Ujjagar Singh) made a complaint to the police against such interference at the behest of defendant. The matter was compromised between the parties whereby the defendant undertook not to interfere in the suit land. Plaintiff No.1 also moved an application to the Deputy Commissioner on 23.10.2002 and there also the defendant admitted not to interfere in the possession of the plaintiffs over the suit land. Thereafter in the absence of the plaintiffs, the defendant forcibly took possession of room marked as AEFG and merged this portion in his house situated towards its northern side. Since the defendant wanted to take forcible possession of plot marked as AEFGDC and the plaintiffs requested him (defendant) to admit their claim, but the defendant refused to accept the claim, hence the necessity to file the suit had arisen.

Defendant filed written statement in the suit taking various preliminary objections including maintainability; plaintiffs had submitted incorrect site plan; plaintiffs have no locus standi to file the suit as they are neither owners nor in possession of any part of the suit property; plaintiffs are estopped to file the suit by their acts and conducts; and the plaintiffs have not approached the court with clean hands. However, on merits, it had

possession of it. Defendant is owner of the suit land and has constructed his house and using the site as courtyard of his house. Defendant has raised the level by filling earth in part of the site. Plaintiffs had obtained the signatures of the defendant on blank papers by using the police influence. The room in dispute is a part of the house of the defendant. The defendant has two shops adjoining the road where he is running his business. Frivolous applications were moved by the plaintiffs against the defendant to harass him and to put unnecessary pressure upon him. The entire construction of the defendant is in existence since long and no new construction has been raised by the defendant, as alleged by the plaintiffs.

In support of their case, the plaintiffs examined PW1-Ranjit Singh and Shri V.K. Prasher, Advocate. Plaintiffs tendered in evidence translated copy of jamabandi for the year 1958-59 (Ex.P-3); certified copy of jamabandi for the year 1958-59 (Ex.P4); translated copy of jamabandi for the year 1959-60 (Ex.P5); certified copy of jamabandi for the year 1959-60 (Ex.P6); Jamabandi for the year 1999-2000 (Ex.P7); Khasra Girdawari (Ex-P8); Aks-shijra (Ex.P9) and report of Local Commissioner (Ex.P10) along with presence-sheet and site plan.

On the other hand, defendant examined DW1 Arjun Khanna, Draftsman; DW2-Surinder Singh, Assistant Revenue Accountant, PSEB, Branch Bullowal and defendant-Chuni Lal himself stepped into the witness-box as DW3. Sita Ram, Kanungo Halqa Bullowal, was appointed as Local Commissioner and, therefore, was summoned as a Court witness.

The trial Court, while considering the evidence so led by the parties including the report of the Local Commissioner, has returned a finding that the predecessor of the plaintiffs was in possession of property in

dispute which is further based on the report of the Local Commissioner and held that the defendant has no concern with the suit property. Though it was pleaded by the defendant that he is in possession of portion marked as AEFG since long as he had got extension of electricity connection, but the trial Court held that a person cannot claim his ownership over the site on a mere plea that he has taken extension of electricity connection. Moreover, when the defendant has stated that he does not know that he is owner of the disputed site, then he has no right to put up his claim against the plaintiffs. Accordingly, vide judgment and decree dated 11.08.2010, the trial Court decreed the suit and held as under:-

“23. So, whatever evidence has come on the file, from that, the Court is of the opinion that the plaintiffs have proved this fact that the predecessor of plaintiffs was in possession of Khasra number 101/1(0-11). So, when the predecessor of the plaintiffs namely Ujjagar Singh was in possession of the same, and the defendant has failed to put-up any better claim than that of the plaintiffs, then the case of plaintiffs qua the defendant would succeed. Further from the report of Local Commissioner, this fact is proved, as discussed above, that portion measuring 6 ½' X 17' which is shown as AEFG in the site plan of the plaintiffs is portion of Khasra Number 101/1(0-11). When this fact is proved on the file that the predecessor of the plaintiffs was in possession of this Khasra number and defendant has no concern with this suit property, then the conclusion which can be drawn is that defendant had

forcibly occupied the portion marked AEFG to the extent of 6½' X 17', as per the report of Local Commissioner. So, the plaintiffs are entitled to the relief of injunction as well as possession, as discussed above. Accordingly issue No.1 is decided in favour of the plaintiffs and against the defendant and issues Nos.2 and 3 are decided against the defendant and in favour of the plaintiffs.”

Aggrieved against the aforesaid judgment and decree dated 11.08.2010, the defendant filed an appeal. But the appeal was also dismissed by the learned Lower Appellate Court vide judgment and decree dated 01.04.2013. Learned Lower Appellate Court held that the trial Court had appointed Sita Ram, Kanungo as Local Commissioner in the case, who submitted his report Ex.P-11 on file. Local Commissioner visited the spot in the presence of the parties and effected measurements from pucca points suggested by the parties and none of the parties raised any objection regarding the measurements so carried by the Local Commissioner, rather their satisfaction was recorded at the end of the report. While dismissing the appeal, learned Lower Appellate Court observed as under:-

“19. In the present case report of Local Commissioner is Ex.P11 on the file. In his report CW1-Sita Ram, Local Commissioner has given the details in which manner he had made the measurements of the disputed khasra number and from which point he started the demarcation. The Local Commissioner has clarified in his report Ex.P11 that he started demarcation from point-A shown in his Naksha that starts from Western-Northern side of

Khasra No.101 which was agreed by both the parties. He has shown the western southern corner of Khasra No.101/1 and thereafter found the same to be correct and thereafter from Eastern-northern corner of Khasra No.99. The local commissioner has located southern-northern corner of Khasra No.101/1 and also given the details in his report regarding the manner he completed the measurement of disputed khasra number. In his report, the local commissioner has mentioned that portion measuring 6 ½' x 17' was found to be in possession of Chuni Lal defendant, in fact is part of Khasra No.101/1. So from the report of Local Commissioner Ex.P11, it is clear that on the western side of Khasra No.101/1 which is the disputed Khasra Number, Chuni Lal has raised construction on area measuring 6 ½' x 17' which comes to 3 ½ *Sarsahis*. In the presence sheet prepared by the local commissioner at the spot, apart from other persons present at the spot, Chuni Lal defendant has also put his signature on the presence sheet meaning thereby Chuni Lal was also present at the spot and demarcation was conducted in his presence. Furthermore, DW3 Chuni Lal defendant in his cross examination has stated that he does not know in which khasra number the disputed site falls and he also cannot tell the area and dimensions of the same. So, when the defendant is not aware about the khasra number, area as well as dimensions of disputed

property, he cannot claim the ownership of property in dispute. It is proved on the file that predecessor of plaintiffs was in possession of disputed khasra number and defendant has no concern with the property in dispute so, defendant has forcibly occupied the portion marked AEFG as per the report of local commissioner. The case laws cited by learned counsel for appellants are not applicable to the facts of the case in hand. As such findings of learned lower court on issue No.1, 2 and 3 stands upheld.”

Still aggrieved with the aforesaid judgments and decrees passed by the trial Court and Lower Appellate Court, the defendant has filed the present Regular Second Appeal.

Learned counsel for the appellant-defendant has argued that the plaintiffs had moved false and frivolous applications against the appellant-defendant to harass him and to put unnecessary pressure upon him. His (defendant's) signatures were taken on blank papers by using the influence of police officials with whom the plaintiffs were having nexus. The defendant has not taken forcible possession of the room and in fact, the disputed property is a part of his house. He has further argued that in fact Gram Panchayat deh is the owner of the land in dispute bearing Khasra No.101/1(0-11) and as such in the column of cultivator, the name of Ujjagar Singh was mentioned as he was holding possession over the suit land. The predecessor of plaintiffs, namely, Ujjagar Singh himself transferred the possessory right of the suit land in favour of Jacob Naru son of Meera

now Ramesh Naru son of Jacob Naru is recorded as gair marusi dyom in the farad jamabandi. It is vide agreement dated 10.11.1977, Jacob Naru transferred his rights in favour of defendant and in this manner, defendant is in possession of the land in dispute. In fact, plaintiffs have prayed for possession of the area 10'x10' as per the site plan, but the learned Lower Court has granted possession of 6 ½' x 17' to the plaintiffs without elaborating any reasons in its findings. The Lower Courts have neither accepted nor rejected the site plan of the plaintiffs, but have accepted the site plan of the Local Commissioner without giving any specific trustworthy reasoning. Sita Ram, Local Commissioner who appeared before the Lower Court had committed fundamental mistakes in measuring the land in dispute without adhering to the order of the learned Lower Court. The Local Commissioner has even admitted in his cross-examination that he has not taken measurement from any fixed point. Therefore, the measurement so taken by the Local Commissioner from two imaginary points set up by him with reference to the map cannot guarantee the accuracy of the measurement. The courts below have ignored the merits of the case viz-a-viz as to whether the property falls in abadi deh or in khasra numbers. Both the parties have admitted that the land in dispute is in abadi area, but despite it, the courts below have committed an error holding that the land in dispute is for cultivation purpose, whereas there is a house built upon the disputed land. He has further argued that the defendant has moved an application under Order 41 Rule 27 CPC for production of agreement dated 10.11.1977 entered between Jacob Naru and the appellant regarding the suit land, but the said application has not been decided and the decision in the case without

there being any decision on the application filed under Order 41 Rule 27

CPC, has made all the difference. Therefore, the impugned judgment of the courts below are liable to be set aside.

I have heard learned counsel for the parties.

The suit is for permanent injunction restraining the defendant from taking forcible possession of plot in dispute. Sita Ram, who was appointed as Local Commissioner, had submitted his report (Ex.P11). In the report, he has clearly stated that on the western side of Khasra No.101/1, which is the disputed khasra number, appellant-defendant Chuni Lal had raised construction on an area measuring 6 ½' x 17' which comes to 3 ½ Sarsahis. This fact has not been disputed by the defendant as he had marked his presence at the time when Local Commissioner visited the spot. The defendant assailed the report of the Local Commissioner on the ground that the Local Commissioner had not conducted the demarcation from the pucca point and had not pin-pointed on the site plan prepared by him that from where he started the demarcation. However, when the Local Commissioner was cross-examined on this aspect that the disputed site is falling inside the abadi area of Village Bullowal and there are built up houses around the disputed land, the Local Commissioner submitted that he traced the demarcation pillar at Point-A as shown in site plan prepared by him and considered it to be a pucca point. The report of the Local Commissioner is categorical wherein he has made measurements of the disputed khasra numbers and the point from which he started the measurements. In his report, the Local Commissioner has clarified that he started the demarcation from the point which was agreed by both the parties and that starts from Western-Northern side of Khasra No.101 which he marked at Point-A in his

disputed khasra number 101/1 as well as measured the same from Western-Northern corner of Khasra No.101. He had further given the details in his report, the manner in which he completed the measurements of the disputed khasra number and the measurements given by him stand tallied with the Aks-shijra (Ex.P9). So, due authenticity is attached to the report of the Local Commissioner wherein he had mentioned that portion measuring $6 \frac{1}{2}' \times 17'$ which he found in possession of the defendant-Chuni Lal, in fact, is a part of Khasra No.101/1. On the basis of cross-examination of defendant, the courts below have come to the conclusion that the defendant is not having any concern or connection with the disputed khasra number. He even does not know in which khasra number, the disputed site falls and is not aware of the area and dimensions. From the report of the Local Commissioner it has been proved that the portion measuring $6 \frac{1}{2}' \times 17'$ which is shown as AEFG in the site plan of the plaintiffs is portion of Khasra No. 101/1(0-11) and when this fact is proved that the predecessor of plaintiffs was in possession of this khasra number and the defendant has no concern with the suit property, then the conclusion which can be drawn is that the defendant had forcibly occupied the portion marked AEFG to the extent of $6 \frac{1}{2}' \times 17'$. So, the plaintiffs were rightly held entitled for possession.

Thus, on the basis of report so submitted, there is a finding recorded by the courts below that the defendant has raised construction on an area measuring $6 \frac{1}{2}' \times 17'$ which comes to $3 \frac{1}{2}$ sarsahis which is part of Khasra No.101/1, but the defendant has shown complete ignorance and had stated in his cross examination that he does not know in which khasra number the disputed site falls and also could not tell the area and dimensions

of the suit property.

So once it is proved that the defendant is totally blank about the details of the property in dispute, he cannot claim ownership over the suit property.

No substantial question of law arises in the present regular second appeal.

No other argument is raised.

Since there are concurrent findings of facts recorded by both the courts below, this Court does not find any reason to interfere in the well reasoned judgments and decrees of the courts below. Accordingly, present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

05.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No