

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-2397-2016 (O&M)

Date of Decision: 17.5.2018

Prem Chand

....Appellant.

Versus

Gram Panchayat, Uplana, District Ambala

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. J.S. Cooner, Advocate for the appellant.

AJAY KUMAR MITTAL, ACJ.

1. Having remained unsuccessful before both the Courts below, the appellant-plaintiff has approached this Court by way of instant Regular Second Appeal challenging the judgment and decree dated 8.12.2015 passed by the District Judge, Ambala, affirming that of the Civil Judge (Junior Division), Ambala, whereby the suit of the plaintiff for possession, was dismissed.

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The plaintiff was owner in possession of the suit property marked as ABCD in the site plan and towards its western site there was a property of Shri Karam Singh. The defendant had got the property of Shri Karam Singh in exchange of khasra Nos. 36//18/2, 23/1, 23/2 as entered in mutation No.377 and attested in the name of Shri Karam singh vide order dated 28.7.1996. The defendant threatened the plaintiff to dispossess from the suit property and tried to take its possession forcibly and illegally. Accordingly, the plaintiff filed a suit for permanent injunction restraining the defendant from interfering into the peaceful possession of the plaintiff over the suit property in the year 1996.

During the pendency of the said suit, the plaintiff was dispossessed from the suit property and, therefore, the suit of the plaintiff was dismissed by the trial court vide order dated 12.1.2008 as the same has become infructuous. The appeal filed against the same was also dismissed by the appellate court vide order dated 16.1.2009. Thereafter, the plaintiff filed the present suit for possession. Upon notice, the defendant filed a written statement raising various preliminary objections. It was pleaded therein that the earlier the plaintiff filed a suit for permanent injunction restraining the defendant from interfering into peaceful possession over the suit property which was dismissed by the trial court vide order dated 12.1.2008 and subsequent appeal against the said order was also dismissed by the appellate court vide order dated 16.1.2009. It was further pleaded that the possession of the suit property was already with the defendant. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made. The plaintiff filed replication controverting the averments made in the written statement and reiterated that of the averments made in the plaint.

3. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is owner of the suit property as mentioned in the plaint? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled for possession of suit property along with permanent injunction as prayed for? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has concealed the material

facts from the court? OPD

5. Whether the civil court has no jurisdiction to try this suit? OPD
6. Whether the suit of the plaintiff is barred u/o 2 Rule 2 CPC? OPD
7. Relief.

4. On appreciation of the oral as well as documentary evidence led by the parties, the trial Court came to the conclusion that the plaintiff had not placed on record any cogent and reliable documentary evidence to show that he was owner and in possession of the suit property and was forcibly dispossessed by the defendant. Accordingly, the trial Court vide judgment and decree dated 8.9.2014 dismissed the suit of the plaintiff. The findings of the trial court on vital issues No.1 and 2 reads as under:-

“8. These issues are taken up together being interlinked and interconnected and in order to avoid repetition of facts. Learned counsel for the plaintiff has argued that the plaintiff was owner and in possession of the suit property and defendant threatened him to dispossess him from it forcibly and illegally. Therefore, the plaintiff filed a suit for permanent injunction against the defendant, however, during the pendency of the said suit, defendant dispossessed him from the suit property forcibly and illegally in the month of June, 2006. Consequently, the said suit of the plaintiff was dismissed and subsequent appeal against the said dismissal of the suit was also dismissed before the Ld. Appellate Court.

In order to prove his claim, plaintiff himself stepped into witness box as PW1 tendering his affidavit Ex.PW1/A in which he reiterated the contents of the plaint in toto. However, during his cross-examination, he admitted that earlier he has filed a suit for permanent injunction against the defendant, which was dismissed and subsequent appeal against the said dismissal order was also dismissed. He further admitted that no appeal against the dismissal of the appeal has been preferred before the Hon'ble High Court. He also admitted that in the earlier suit for permanent injunction, he had not filed any application for amendment of suit. In support of his version, plaintiff also examined Prem Chand son of Rulia Ram who in his cross-examination stated that he had seen the documents regarding the suit property and as per documents plaintiff is owner of the same. However, there are no documents on record which would show that plaintiff is owner of the suit property. Further, the plaintiff, in the earlier suit claimed that he was in possession of the suit property but was dispossessed by the defendant during the pendency of that suit. Therefore, the plaintiff filed the present suit for possession over the suit property. To this, plaintiff has not placed on record any cogent and reliable oral as well as documentary evidence, which shows that plaintiff was ever in possession of the suit property and was forcibly

dispossessed by the defendant. Further, there is no cogent evidence is available to establish the fact that the plaintiff is/was owner of the suit property and it was ever in his possession. In the absence of any cogent and reliable evidence on record, plaintiff has failed to prove that he is owner of the suit property and was in possession of the same and also defendant forcibly and illegally dispossessed him from it.”

5. Feeling aggrieved, the plaintiffs took the matter in appeal and the lower appellate Court finding no illegality and infirmity in the findings of the trial Court, dismissed the appeal vide judgment and decree dated 8.12.2015. The material conclusion of the lower appellate court is in the following terms:-

“Ex.P4 is copy of judgment dated 12.1.2008 passed by the Court of Shri Mahavir Singh, the then learned Civil Judge (Jr. Div.), Ambala revealing that suit of the plaintiff was dismissed. Perusal of this judgment reveals that it was found therein that suit property was part of *Shamlat deh*. It was further found that plaintiff had failed to prove that he was either in possession of the suit property or that he was ever dispossessed. It was further found that civil court had no jurisdiction to entertain the matter, as it was barred under Section 13 of the Punjab Village Common Lands Act. With these findings, the suit was dismissed.

Ex.P5 is copy of the decree sheet in this regard.

Ex.D1 is copy of judgment dated 16.01.2009 passed by the Court of Shri Vikram Aggarwal, the then learned ADJ, Ambala revealing that appeal filed by plaintiff Prem Chand against judgment and decree dated 12.01.2008 (Ex.P4 and Ex.P5) was dismissed. Learned Appellate Court also found that land in dispute was a vacant land situated in the *Abadi Deh* and plaintiff had failed to prove that he was either owner or in possession thereof and so, said land was held to be *Shamla deh* and resultantly, jurisdiction of the civil court was barred.

In his cross-examination in the present case, plaintiff has admitted that he did not file any appeal before Hon'ble High Court against dismissal of his previous suit and appeal.”

6. The present appeal has been filed by the appellant-plaintiff claiming the following substantial questions of law:-

- “1. Whether the oral evidence regarding ownership and possession of the property situated in abadi of the village can be discarded for want of any documentary evidence regarding title?
2. Whether the present suit for possession can be dismissed primarily on the basis of dismissal of earlier suit for permanent injunction regarding the same property?
3. Whether the Ld. Civil Court has jurisdiction to entertain and try the present suit for possession

regarding the suit property situated in abadi of the village?

4. Whether the impugned judgments and decrees passed by both the courts below are liable to be set aside being based on misinterpretation of evidence and law?”

7. I have heard learned counsel for the appellant.

8. Learned counsel for the appellant has made an attempt to persuade this Court to re-appreciate the evidence led by the parties before the trial Court to differ with the opinion of the courts below which is not permissible in view of the provisions of Section 100 of the Code of Civil Procedure. The Courts below on appreciation of oral as well as documentary evidence had recorded a concurrent finding of fact that the plaintiffs had failed to prove by leading cogent and reliable evidence that he was owner in possession of the suit property and that the defendant had forcibly and illegally dispossessed him. No misreading of evidence on record by the courts below had been shown by the learned counsel warranting interference by this Court in the regular second appeal.

9. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

10. Accordingly, finding no merit in the instant appeal, the same is hereby dismissed. No costs.

May 17, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned

Yes

Whether Reportable

Yes