

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

RSA No.2422 of 2016

Date of Decision.24.04.2018

Pritam Singh and another

.....Appellants

Vs

Jaswinder Singh and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Dhaliwal, Advocate
for the appellants.

Mr. Gaurav Singla, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The costs of ₹5000/- has been deposited vide receipt dated 23.04.2018 in compliance of the order dated 03.04.2018.

The appellants-plaintiffs are in regular second appeal against the concurrent finding of fact whereby the suit filed by the respondents-plaintiffs for permanent injunction restraining the defendants from forcible interference in their peaceful possession had been decreed and the appeal preferred against the same has been dismissed by the lower Appellate Court.

The respondents-defendants instituted the aforementioned suit seeking permanent injunction restraining the defendants from creating any document and selling, mortgaging or transferring the house owned and possessed by the plaintiffs situated in Preet Nagar near Mano Porian Mandir, Sunam with consequential relief of restraining the defendants from dispossessing the plaintiffs illegally on the premise that the plaintiffs were/are residing in the house in dispute and electric meter connection has been installed in the name of the plaintiff No.2. The defendants are brothers

of plaintiff No.1 and sons of plaintiff No.2. They never served plaintiff No.2 or had been sincere for which reason they were living separately. They formed an unlawful party against the plaintiffs and created forged and fabricated documents regarding the funds of plaintiff No.2. They also intended to alienate the house on the basis of the aforementioned fabricated document and therefore, cause of action arose to file the aforementioned suit.

The appellants-defendants appeared and contested the suit by raising numerous preliminary objections. On merits, it was stated that the plaintiffs never remained in possession of the house in dispute in any capacity. The site plan produced on record was incorrect, wrong and not as per the actual and factual position at the spot. In fact, defendants were and are in possession of the house in dispute since long by raising the construction of the house after spending huge amount. The plaintiffs are residing in Mohalla Guru Nanak Pura, Sunam, which is far away from the house in dispute. No proof of ration card had been placed on record except electric connection.

Since the parties were at variance, the trial Court framed as many as four issues including the issue of relief. The plaintiffs in support of their averments in the plaint examined as many as four witnesses i.e. PW-1 Jeet Singh plaintiff, PW-2 Amar Singh, LDC Punjab State Power Corporation Limited (Urban) Sunam, who tendered into evidence his affidavit Ex.PW2/A, PW3 Prem Kumar Clerk, Nagar Council Sunam who tendered his affidavit as PW3/A, PW4 Jaswinder Singh and tendered into evidence documents Ex.Mark N i.e. the site plan and electricity bill dated 4.4.2005 as Ex.PX. On the other hand, the defendants examined Major

Singh Draftsman as DW1, Sukhwinder Singh, Photographer as DW2 and Malkiat Singh (number as DW2 again) and tendered documents letter No.2302 as Mark A, test report as Mark B and C, application regarding connection as Mark D, report regarding connection as Mark E, connection report as Mark F and application dated 10.8.2009 as Mark G.

The trial Court on the preponderance of aforementioned evidence decreed the suit by restraining the defendants from dispossessing the plaintiffs and selling or mortgaging the suit property. The appeal preferred against the before the lower Appellate Court was also dismissed.

Mr. R.S. Dhaliwal, learned counsel appearing on behalf of the appellants submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law, for, the suit for permanent injunction was not maintainable. The Courts below committed illegality and perversity while entertaining the said suit. In fact, the plaintiffs miserably failed to prove possession, much less, ownership. No specific date had been mentioned when the respondents-plaintiffs were turned out of the house or attempt was made for forcible dispossession, for, maintaining the suit for injunction, one has to prove the continuous and long/settled possession. Courts below, thus, mis-interpreted the admitted facts, for, PW1 Jeet Singh and PW4 Jaswinder Singh admitted in their respective statements that the respondents-plaintiffs had resided in the house at Nanakpura, having ration card and voter card of that house, which was sufficient evidence for the Courts to decline the injunction. Malkiat Singh i.e. appellant No.2 deposed before the Court that he had deposited the security and other charges for installation of the meter but the aforementioned fact had not been adverted to, therefore, there was mis-direction. The statement of Jeet Singh, PW1,

had also been ignored which clearly showed that he admitted the ownership of the appellants-defendants. No injunction lies against the owner or co-sharer, thus, urges this Court setting aside the judgments and decrees under challenge.

On the other hand, Mr. Singla submitted that the concurrent finding of fact cannot be interfered with unless and until there is any illegality and perversity. The appellants-defendants have not been able to prove on record that they were in possession. The findings rendered by the Courts below are based upon preponderance of documentary and oral evidence in granting the injunction against the defendants, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Dhaliwal, for, the appellants-defendants have not been able to bring on record any evidence to show that they had been in possession contrary to the evidence led by the respondents-plaintiffs. PW-3, clerk from the office of Nagar Council, Sunam tendered his affidavit as PW3/A and brought the summoned record showing account No.6357 regarding the water supply connection was provided in favour of Jaswinder Singh son of Jeet Singh and the said entry has been proved on record as Ex.P3 and application as Ex.P4. The electric connection as referred to above had also been proved as Ex.P1 and billing ledger as Ex.P2. Jaswinder Singh also reiterated the same fact. There was, thus, no concealment on behalf of the respondents-plaintiffs. In fact the evidence brought on record by the defendants could not belie the statement and the evidence of the respondents-plaintiffs which was sufficient to prove possession of the plaintiffs over the house in dispute.

The draftsman, court complex, Sunam admitted that he prepared the site plan of the house at the court complex and Sukhwinder Singh, photographer admitted that he clicked the photographs of the house but his camera had no facility of date and time nor he confirmed of the possession of the property in dispute.

All these facts have been noticed by the Courts below. The argument of Mr. Dhaliwal has not been able to cut ice to arrive at a finding than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 24, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No