

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1582 of 2015 (O&M)

Date of Decision: April 24, 2018

Gurdwara Dera Mata Satian, Management Committee, VPO Jaid, Tehsil
Bholath, District Kapurthala

...Appellant

Versus

Surjit Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rajwant Singh Chahal, Advocate,
for the appellant.

Mr.Malkeet Singh, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings rendered by both the Courts below, whereby the suit for injunction restraining the defendants not to interfere and take forcible possession through themselves, relatives, agents, friends etc. in respect of land measuring 2 kanals 18 marlas, situated in the revenue estate of Village Jaid, Tehsil Bholath, District Kapurthala comprised in Khewat No.993, Khatauni No.1074, 1075, bearing Khasra No.56//8/1min/1-18, 56//8/1min/1-0, Kittas 2, as per jamabandi for the year 2003-2004, has been dismissed.

Along with the appeal, CM No.4392-C of 2015 for placing on record certified copy of judgment and decree dated 24.11.2001 passed by the Additional District Judge, Kapurthala in Civil Appeal No.398 dated 18.9.1998 titled as “Dr.Jattan Singh & others Versus Malkiat Singh”, by

way of additional evidence, has been moved.

Appellant-plaintiff-Gurdwara instituted the aforementioned suit on the premise that they have been in possession of the property since long and running a Gurdwara. The land in the revenue record has been shown as “Shamlat Patti Hazab Rasad Khewat”. Defendant No.2, who was earlier in possession of the suit land, voluntarily surrendered possession since long and since then plaintiff Committee had been in peaceful, long and settled possession and constructed two hall rooms and installed an electric meter. The defendants did not have any concern but had perpetually been extending threat giving cause of action to file the suit.

The defendants contested the suit by filing written statement taking various preliminary objections. On merits, it was stated that one Jaswinder Singh son of Rajinder Singh was in possession of the property as a proprietor. He was shown to be owner of land measuring 36 kanals 6 marlas on the southern and eastern side of the suit property and had constructed two rooms in the land which adjoined the suit land. He had also installed an electric motor in the land by constructing a separate kotha. On his demise, his two sons, namely, Amrit Singh and Rashwinder Singh sold the property along with electric motor to Smt.Sukhjinder Kaur wife and Manjit Kaur daughter of defendant No.1 vide registered sale deed dated 7.11.2008 and delivered possession along with the constructed shed on receipt of a sum of ₹2.00 lacs. In fact, the plaintiff wanted to take the possession from the defendants. A representation was also made to the police, wherein DSP, Sub Division, Bholath made an enquiry and found that the defendants were in possession of the suit land.

Both the parties led evidence in support of their respective

claims. The plaintiff placed on record copy of jamabandi Ex.P4 for the year 2003-2004 to establish possession, but the trial Court did not give weightage to the same, which was shown to be “Shamlat Patti Hasab Rasad Khewat” in all the columns and dismissed the suit.

Mr.Rajwant Singh Chahal, learned counsel appearing on behalf of the appellant-plaintiff submitted that in the previous round of litigation between Dr.Jattan Singh & others Versus Malkiat Singh, as per the judgment and decree dated 24.11.2001 sought to be placed on record by way of additional evidence, the plaintiffs were held to be in possession of the suit property. This is sufficient evidence to grant injunction in favour of the appellant-plaintiff. On merits, it has been stated that both the Courts have abdicated in arriving at findings as possession had been admitted by defendant No.2. It is the best piece of evidence. Alleged demarcation report, relied upon by the Courts below, in the absence of any counter claim is neither here nor there. The demarcation has been conducted in the absence of the plaintiff and, therefore, the same could not be relied upon. The injunction was sought with regard to Khasra No.8/1, whereas the defendants as per the sale deed, have become the owners of property of khasra No.8/2, against which no claim had been laid. All these factors have been ignored and misdirected and, therefore, there is illegality and perversity.

Per contra, Mr.Malkeet Singh, learned counsel for the respondent-defendant submitted that the additional evidence sought to be placed on record shows that Malkiat Singh had suffered a statement in favour of the appellant-plaintiffs in the aforementioned suit and, therefore, the same could not be given weightage for the adjudication of the present lis. The documentary evidence has to be given weightage vis-a-vis the oral

statement. The demarcation report established that it was the defendant No.1 who was in possession of the suit property. The jamabandi relied upon shows the character and nature of the suit property to be “Shamlat Patti Hasab Rasad Khewat” and not in possession of the plaintiffs. It is in that background, the Courts below declined to grant injunction and, thus, urged this Court for upholding the concurrent findings as there is no illegality or perversity.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr.Chahal vis-a-vis the main appeal and as well as the application for additional evidence, for, on going through the judgment dated 24.11.2001, which is sought to be placed on record by way of additional evidence, the injunction had been granted only on the basis of the statement suffered by Malkiat Singh, which is not an adjudication on merits, therefore, it would not help this Court in adjudication of the lis in a suit for permanent injunction, which has been dismissed by both the Courts below.

Coming to the argument of Mr.Chahal, I am afraid it has no substance and devoid of merit, for, no document has been placed on record to establish the possession. The jamabandi only shows Shamlat Patti Hasab Rasad Khewat to be owner and not a single column proves the possession of the appellant-plaintiffs. On the contrary, defendants have been able to prove the sale deed and on the basis of the demarcation report, the Courts found that the possession was none else but of the defendants. All these factors have been given due weightage by both the Courts below. I am afraid, the argument of Mr.Chahal is not able to cut ice enabling me to form a different

opinion than the one arrived at.

For the reasons stated above, there is no illegality or perversity in the concurrent findings. No ground for interference is made out. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

April 24, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No