

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

**RSA No.1626 of 2015(O&M)
Date of Decision: 07.08.2018**

**Harpreet Singh through his LR's. Gagandeep Kaur and
others
Versus**

.....Appellants

Pargat Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. C.B. Goel, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Plaintiffs are in regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and mandatory injunction.

[2]. Plaintiffs No.1 to 3 claimed that they are owners of the plot having dimensions i.e. East: house of Hans Raj, West: gali, North: plot of Buta Singh and South: plot of Joginder Singh as per site plan Mark B. Plaintiffs No.4 and 5 claimed themselves to be owners of another plot having dimensions i.e. East: house of Pawan Kumar measuring 80', West: gali, North: plot of Harpreet Singh measuring 70' and South: plot of Amar Chand measuring 65' as per site plan Mark C. Plaintiffs pleaded that they and their predecessor-in-interest were old biswedars/owners of the suit property. Adjacent land to the land of the defendant

was also under their ownership and possession i.e.

East: 17' 6" gali shareaam;

West: 17' 6" self remaining plot;

North: 64 ½ house of Smt. Kalanwanti;

South: 64 ½ house of Maghar Mal etc.

The house was constructed by the plaintiffs for the purpose of tethering cattles. Plaintiffs further pleaded that proceedings under Section 145 Cr.P.C were initiated and Tehsildar was appointed as Receiver who took possession of the property from the plaintiffs. Ultimately, Sub Divisional Magistrate opined that the matter be tried before the Civil Court.

[3]. The suit was contested by the defendants. Defendant No.1 pleaded that he is exclusive owner of the suit property from the time of his ancestral. Suit property is also the part of property measuring 2 kanals 3 marlas belonging to defendant No.1. On 11.02.2006, revenue authorities got the suit land forcibly vacated from defendant No.1 and throw away his belongingness/domestic material outside the premises in an illegal manner. The electricity and water connections were in the name of the defendants.

[4]. Both the parties went to trial. Issue No.1 was "Whether the plaintiffs are entitled to the relief of declaration as well as injunction as prayed for by them

with respect to the disputed property on the grounds so mentioned in the plaint? OPP

Plaintiffs sought three reliefs. Firstly for the declaration that they are owners in possession of the suit property on the basis of possessory title. Secondly, issuance of mandate to the Tehsildar for return of possession of the suit property to them and thirdly, issuance of injunction against defendant No.1, restraining him from interfering in the peaceful possession of the plaintiffs. Plaintiffs claimed themselves to be old biswedar through their predecessor-in-interest who were owners of the suit property as well as adjacent property since long. They claimed that some of the property was sold to Kalawati who in turn sold the land to the defendants. Plaintiffs specifically pleaded that they had done the construction of the house and the said premises was being used for tethering the cattles, but the defendants were adamant to take forcible possession, so proceedings under Section 145 Cr.P.C were initiated and Tehsildar was appointed as Receiver who took possession of the suit property from them. Since the land is situated within the *lal dora*, therefore, no documentary evidence qua title was produced by any of the party. In the absence of documentary evidence, possession by itself is a presumptive proof of title.

[5]. As per stand taken by the defendants, earlier one Buta

Singh filed a suit. The said suit was dismissed. Plaintiffs were adamant to take forcible possession of the land which was never in the ownership of the plaintiffs. In fact, Tehsildar took possession of the suit land from the defendants. Plaintiffs have to stand on their own legs and they cannot take benefit of weakness of the defendants' case (if any). Since there was no title in favour of the plaintiffs, therefore, the Court had to weigh the oral evidence brought on record by the parties. Plaintiffs could not lead any documentary evidence qua title of the suit property. The possessory title of the plaintiffs has to be appreciated with reference to oral evidence on record.

[6]. Plaintiff No.6 himself appeared as PW 1 and made the following statement in his cross examination:-

“The place for which I have come to the Court to depose was our land. However, there is no construction over the same. It is totally vacant. The land must be about 2 kanals and 1 kanal land fall into my share. I do not know whether there were any proceedings initiated under Section 145 Cr.P.C by SDM, Ratia or not. I even cannot tell about final order of the said proceeding. I also do not know whether any appeal was pending against the order of the SDM, Ratia. All plaintiffs are having joint possession and no one is having possession over the specific portion of the suit property. The said land is with us since long. However, two years back, it's possession was taken by Tehsildar.

When Tehsildar had taken possession he had taken the same from Pargat Singh. Pargat Singh was a tenant, but I cannot tell that who had given the said place to Pargat Singh on rent. Tehsildar had thrown out the luggage of Pargat Singh and kept it outside.”

[7]. Similarly, Narsi has appeared as PW 2 who has also admitted in his cross examination that Pargat Singh defendant had possession of the suit property for three years, but he cannot depose that Pargat Singh was in possession during which period. Again Raj Kumar (PW4) admitted in his cross examination that he was not a summoned witness and he cannot tell about number of disputed property. However, he knew the suit property was being attached under Section 145 Cr.P.C and possession was taken by Tehsildar.

[8]. Statement of PW 1 was negated. Even the pleadings of the plaintiffs in the suit would show that the plaintiffs themselves have pleaded that the property was attached under Section 145 Cr.P.C. While appearing as PW 1, plaintiff No.6 has pleaded ignorance about the aforesaid fact, rather in his own statement, possession of Pargat Singh defendant was established.

[9]. Learned counsel for the appellants has made frantic effort by referring to the statement of Pargat Singh for the credit of the plaintiffs' case. Plaintiffs cannot take benefit of weakness of the defendants' case particularly when all their witnesses viz.

PW 1, PW 2 and PW 4 have categorically admitted the possession of Pargat Singh over the suit property. Pleading ignorance qua attachment proceedings would also go in a long way to show that the plaintiffs were not certain about the pleadings and could not correlate the same with reference to evidence on record. Sale deed Ex.P1 on being compared would show that dimensions did not tally. Even otherwise, plaintiffs were supposed to lead cogent evidence to prove their possessory title over the suit property. In the absence of such evidence, the suit of the plaintiffs is bound to be dismissed.

[10]. Both the Courts below have appreciated the evidence on record. The appreciation done by the Courts below is not found to be the result of misreading of evidence. The findings recorded by the Courts below are not proved to be perverse by any stretch of imagination. No law point worth consideration is involved in the present appeal and the same is accordingly dismissed in limine.

August 07, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

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