

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4592 of 2016 (O&M)
Date of Decision : 17.05.2018

Babu Lal

.....Appellant

Versus

Smt. Bimla Devi and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. S.K.Yadav, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondent/plaintiff was dismissed by the trial Court vide judgment and decree dated 30.10.2014, but the appeal preferred against the said decree was accepted and the appellate Court decreed the suit, vide judgment and decree dated 5.11.2015. This is how, defendant No.1, is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for permanent injunction restraining the defendants from causing any interference in his ownership and possession by raising construction over the plot measuring 3 marlas comprised in killa No.18//19/10, situated in village Mulodi, Tehsil Narnaul, shown by letters ABCD in red colour in the site plan. It was pleaded that the plaintiff had purchased the suit property from Om Parkash son of Gordhan for a sale consideration of Rs.1,00,000/-, pursuant to a sale deed No.2 dated 01.04.2011. Thus, she was the owner in possession of the suit

property. Further, the defendants who were neighbours of the plaintiff requested her to permit them to keep fuel wood sticks at the site and assured that they shall remove their articles as and when they would be asked to do so. Resultantly, they stocked their belongings at the suit property. But, eventually, they instead entered into a quarrel with the plaintiff when asked to clear the site and it was on the intervention of the respectable of the village the defendants removed the fuel wood on 02.08.2011. Later, when the plaintiff visited the site for getting the foundation dug to raise a boundary wall, the defendants again started quarreling and threatened to dis-possess her forcibly from the plot in question, thus the suit.

In the written statement filed on behalf of defendant No.1, it was pleaded that the suit property was not a plot but a Guwara. Ownership of Om Parkash son of Gordhan over the suit property was denied and the sale deed dated 01.04.2011, was said to be invalid. Rather, defendant No.1, claimed to be in possession of the suit property for the past over 40 years, for, he has been keeping his fire wood sticks, rudi and tethering his goats. In fact, the defendant has been the owner in possession of the suit property and the plaintiff had no concern therewith.

On a consideration of the matter, the trial Court reached a conclusion that plaintiff Bimla had purchased the suit land from one Om Parkash on 01.04.2011, for a consideration of Rs.1,00,000/-. The plaintiff was delivered possession of the plot in question by her vendor on the date of the execution of the sale deed. However, the plaintiff herself had admitted in the plaint that she permitted defendant Babu Lal to stock his

fire wood sticks upon the disputed property. But upon reluctance of the defendant to dis-lodge his fire woods, the plaintiff resorted to the police proceedings and it was under a duress of penal law the defendant removed his fire wood sticks. Thus, in the wake of the admission of the plaintiff herself that defendants did occupy the suit property, for, her to succeed she was required to show as to how the defendants, thereafter, lost possession. Further, the plaintiff examined Kailash Chand, PW1, Chanderpal PW-3 and Om Parkash PW-5, who although categorically deposed that plaintiff was in actual physical possession of the suit property but none explained as to how and before whom defendant Babu Lal vacated the suit land. Thus, it was the defendant who was still in possession. And that being so, no injunction could be granted to the plaintiff.

The appellate Court on an analysis of the matter in issue and the evidence on record concluded that the jamabandis for the year 1977-78 Ex.P5, 1982-83 Ex.P4 and 2007-08 Ex.P3, showed that Om Parkash son of Gordhan was the owner in possession of the suit property. Later Om Parkash sold the suit property to the plaintiff, pursuant to the sale deed dated 1.4.2011, (PW-6/A). Vide mutation No.864 Ex.P2, the suit property was accordingly mutated in favour of the plaintiff. Thus, the plaintiff happened to be the owner in possession of the suit property. Thus, even if, the defendants were permitted to stock or place their fire wood sticks, cow dung's cake and tether their cattles in the plot in question, it could hardly be termed as an evidence to claim established and exclusive possession. In the record of rights, the plaintiff was shown to be the owner in possession of

the suit property. And, in terms of Section 44 of the Land Revenue Act, a presumption of truth was attached to the jamabandis. No evidence was led by defendant No.1, to show that he indeed was in actual physical possession of the plot in question. In fact he merely intended to take advantage being the owner of the adjoining plot. Nothing was brought on record either to show that defendant No.1, either carried out any construction or raised a *katcha chappar* over the site in dispute. And the position of law was settled that possession of a vacant plot is always presumed to be of the owner. That being so, it was concluded that there was hardly any occasion for the plaintiff to obtain possession of the suit property from the defendants who was once permitted to keep his articles at site. Resultantly, the suit was decreed.

On being pointedly asked, learned counsel for the appellant/defendant No.1, could not refer to anything on record if the conclusion reached by the Appellate Court was either contrary to the record or suffered from any material illegality. Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly, dismissed.

17.05.2018

Manoj Bhutani

**(ARUN PALLI)
JUDGE**Whether speaking/reasoned
Whether reportableYes/No
Yes/No