

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

115

RSA-1342-2014 (O & M)
Date of Decision:08.08.2018

Shami and others

...Appellants

Versus

Chet Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Lamba, Advocate for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate for the respondents.

ANIL KSHETARPAL, J.(Oral)

Defendants-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court.

Plaintiffs filed a suit for permanent injunction restraining the defendants from interfering in their possession as the defendants were threatening to dispossess him. It is pleaded case of the plaintiffs that predecessor-in-interest of the plaintiffs and proforma defendant-Mangal Ram were allotted Gosa-Vav No.7 measuring 18 marlas and 3 sarsai by the Rehabilitation Department vide sanad dated 24.03.1955. It is further pleaded that they had installed a submersible tube-well and got an electric connection thereon. Defendants contested the suit and stated that the entire suit filed by the plaintiffs is incorrect.

Learned trial Court merely relying upon the fact that neither the plaintiffs have not appeared in the witness-box nor Dal Chand (Urdu knowing person) has been examined to prove the correctness of the translation, dismissed the suit. However, learned First Appellate Court reversed the judgment on re-appreciation of evidence.

Learned counsel for the appellants argued that entire onus was put up by the learned First Appellate Court on the defendants, although, it was for the plaintiffs to prove that they are owners in possession. He further submitted that in absence of examination of the plaintiffs or Dal Chand (given up), plaintiffs have failed to prove on record that they are owners in possession. It may be significant to note here that entire confusion has been created because the plaintiffs claim that the word is Gosa-vav, which is a number as signed by the Rehabilitation Department, while allotting the property. However, it is the case of the defendants that it is in fact Khusrat Burj No.7. It may be noted that it is not the defendant's case that Khusrat Burj No.7 is owned by them or is allotted to them.

Learned counsel for the respondents while drawing attention of the Court to declaration form has pointed out that Mangal Ram predecessor of the plaintiffs had been allotted the property in dispute vide allotment letters No.G.G. 3/21/102 and G.G. 3/21/107 at village Dingerheri. He further drew attention of the Court to Sanand i.e. final allotment letter wherein the numbers of the property mentioned are exactly the same. He has further drawn attention of the Court to a Hindi translation of the register of the Rehabilitation Department, where it is specifically recorded that plot No. Gosa-Vav No.7 measuring 18 marlas and 3 sarsai has been allotted to the predecessor of the plaintiffs. He submitted that the person who translated the said document has been examined as PW-2, whereas official, who had brought the original register, which is in Urdu has been examined as Dalbir Singh PW-3. Copy of the original register is also available on the file as Ex.DA. He has further drawn attention of the Court to the application filed by predecessor (father of the defendant) wherein he applied for allotment of the

plot in question, however, no plot was allotted.

Learned counsel for the respondents further while drawing attention of the Court to the evidence of the defendant pointed out that the defendants while appearing as DW-1 has admitted that as per record of the custodian, it is Gosa-Vav No.7. It is further admitted by him that the disputed plot was demarcated by Deep Chand, Tehsildar. Still further, he admitted that they had filed an application for purchase of the plot.

Keeping in view the arguments of learned counsel for the parties, it is apparent that learned trial Court got confused with the words Gosa-Vav or Khusrat Burj. It is not the case of the defendants that any allotment has been made in their favour or in favour of their predecessor of Khusrat Burj No.7. Whether the property is known as Gosa-vav or Khusrat Burj property No.7 would not make any difference. Deep Chand a retired Tehsildar has visited the place and demarcated the area in the presence of the Kanungo and the Patwari. Deep Chand has been examined in evidence but no suggestion has been given that the plot which was demarcated by him was not Gosa-vav No.7. This Court is not repeating what has been argued by the learned counsel for the respondents. In view of the overwhelming evidence available on the file, this Court does not find any error in the judgment passed by the learned First Appellate Court.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

08.08.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No