

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

RSA No.1367 of 2014(O&M)

Date of decision: 13.11.2018

Ran Singh

.....Appellant

VERSUS

Daya Nand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Keshav Partap Singh, Advocate for the appellant.

Mr. R.A. Sheoran, Advocate for respondents No.1, 2 and 5.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 12.02.2014 passed by the Additional District Judge, Bhiwani whereby appeal preferred by respondents No.1, 2 and 5/defendants against judgment and decree dated 19.10.2011 passed by the trial Court decreeing suit of the appellant/plaintiff and dismissing counter claim of the respondents/defendants was accepted, judgment and decree dated 19.10.2011 were set aside and suit filed by the appellant/plaintiff for grant of injunction was dismissed whereas the counter claim preferred by the defendants was allowed.

The facts relevant for disposal of present appeal are that Ran Singh – appellant staked his claim for permanent injunction qua land measuring 16 biswas pukhta, detailed in head-note of the plaint as per jamabandi for the year 1999-2000 and marked by letters ADEF. He has claimed his possession over suit land as gair marusi and prayed to restrain

the defendants not to interfere in his peaceful possession as they have no concern with the suit land. It is averred that father of the plaintiff namely Tek Chand was in possession over suit land for the past 35-40 years who has died 5-6 years ago before filing of the suit. After death of Tek Chand, plaintiff and his brother Rajesh are using the suit land as their residential house and Bara. Late Sh. Tek Chand constructed a pucca residential house on suit land shown by letters ABCD in green colour in the site plan. There is a bara towards western side of constructed portion measuring 786 square yards 14 inches shown in red colour and marked with letters ADEF. The area ADEF is used by the plaintiff as a balai, for the purpose of bitoda, kurari and cattle folk. Possession of the plaintiff over suit land is continuous wherein he has put baar (fence) on three sides. The gate of house of the plaintiff opens at point M in the suit land.

Defendants No.1 and 2 filed their joint written statement/ counter claim raising preliminary objections inter alia locus standi to file the suit; the suit is not maintainable in the present form; no suit is maintainable against the true owner; the plaintiff is a wrongdoer and cannot take benefit of wrongful act; he has not come to the Court with clean hands and has suppressed the material facts. All material averments of the plaint with regard to possession of the plaintiff over portion marked ADEF have been denied with the plea that entry in revenue record is wrong and liable to be ignored. In the revenue record, land has been shown as gair mumkin bara while major portion of land has been constructed since last many years. Father of plaintiff has already passed away and revenue entries in the name of a dead person are inadmissible in evidence and liable to be ignored. Answering defendant No.1 is a co-

sharer in the suit land and he has filed a suit against Dev Karan etc. owners of adjoining khasra No.342 who tried to encroach upon land in dispute in which interim injunction has been granted in favour of defendant No.1. The plaintiff and his family members have unauthorisedly raised construction over an area measuring 365 square yards on khasra No.343/359-260 shown by letters ABCD in the site plan, about 5-6 years ago. Defendant No.1 will file a suit for possession by way of ejectment against the plaintiff and his family members. The defendants are in possession of land shown by letters ADEF as co-sharers and plaintiff has no right, title or interest in the balai of answering defendants. They filed counter claim for issuance of direction to the plaintiff to close the door opened by him at point M in the western wall AD.

The written statement filed by defendants No.1 and 2 was adopted by defendant No.5 whereas the other defendants were proceeded against ex parte.

The plaintiff preferred replication and reiterated his stand taken in the plaint and controverted the preliminary objections and averments with regard to possession of defendants on portion ADEF or their entitlement to seek closure of door M by way of counter claim.

The controversy between the parties led to framing of following issues:-

1. Whether plaintiff is entitled to the relief of injunction as prayed?OPP
2. Whether plaintiff has no locus standi to file the present suit? OPD

3. Whether the suit is not maintainable in its present form?
OPD
4. Whether plaintiff has not come in the Court with clean hands and has suppressed the material facts from the Court? OPD
5. Whether suit of the plaintiff is false and frivolous? OPD
- 5A. Whether the counterclaim of defendants No.1, 2 and 5 is liable to be accepted as prayed for? OPD
6. Relief.

The parties were permitted to adduce evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the trial Court answered issues No.1 and 5-A, taken up together in favour of the appellant/plaintiff and as a consequence, suit of the appellant was decreed restraining the defendants not to dispossess the plaintiff from suit property except in due course of law but the counter claim filed by defendants No.1, 2 and 5 was dismissed.

Feeling aggrieved against the judgment and decree passed by the trial Court, defendants No.1, 2 and 5 preferred the appeal and the same was allowed by the Additional District Judge, Bhiwani in the terms, noticed hereinbefore.

Counsel for the appellant would urge that as the plaintiff and earlier his father Tek Chand was in possession of land measuring 16 biswas pukhta which is used by him as his residential house and balai for the purpose of bitoda, kurari and cattle folk, he cannot be dispossessed from suit land except in due course of law. It is further argued that even if Daya Nand – defendant No.1 is one of the co-owners in the bara in

question, he cannot be permitted to take the law in his hands and forcibly interfere in possession of suit land by the appellant/plaintiff. It is further argued that the trial Court, on a detailed consideration of materials on record, had rightly decreed the suit and dismissed the counter claim but the Appellate Court has seriously erred rather committed perversity by reversing the judgment and decree passed by the trial Court. It is further argued that the very fact that the plaintiff has opened gate M in the wall on western side of his house constructed on area marked ABCD, it is more than sufficient to establish that even the portion marked by letters ADEF is in possession of the plaintiff and used by him for the purpose of balai.

Counsel representing the respondents has supported findings of the Appellate Court with the submission that admittedly neither the plaintiff nor his father is owner of area marked with letters ABCD in respect of house constructed thereon as well as open space depicted by letters ADEF in the site plan. Further argued that as defendant No.1 is one of the co-sharers in the entire land measuring 16 biswas, he is deemed to be in possession of open area marked with letters ADEF, thus, disentitling the plaintiff to seek any injunction against true owner.

I have heard counsel for the parties, perused the paper-book particularly the judgments impugned.

There is no dispute between the parties that Daya Nand – defendant No.1 is one of the co-owners of land measuring 16 biswas. It is also an undisputed fact that on the portion marked ABCD, a house has been constructed and plaintiff along with his family has been residing therein. The contesting defendants have raised a plea that they will file a

suit seeking possession of the area underneath the house marked as ABCD in the site plan.

The real dispute between the parties is only in respect of area marked with letters ADEF. As per plea of the appellant/plaintiff, the said area is an open space being used as balai for the purpose of bitoda, kurari and cattle folk. The open space in a village used for the purpose of tethering cattle, manger, placing fodder cutting machine or cow dung etc. is not an evidence of possession to seek injunction against true owner of said land. In this context, reference can be made to judgment of this Court **Parmjit Singh Vs. Vijay Parkash Bhambri and another, RSA No.4536 of 2018 decided on 02.08.2018**. Since the plaintiff/appellant is not owner of area marked with letters ADEF but defendant No.1 is admitted to be one of the co-owners of said land, the plaintiff is not entitle to injunction against true owner. In this view of the matter, I do not find an error much less perversity in findings of the Appellate Court dismissing claim of the plaintiff qua portion ADEF and further directing him to close the door M that opens in portion ADEF. In this view of the matter, judgment and decree passed by the Appellate Court do not suffer from an error much less perversity, warranting intervention.

For the foregoing reasons, appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

NOVEMBER 13, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no