

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4024 of 2014
Reserved on 7.5.2018
Date of decision: 16.5.2018

R.D. Devgan Appellant

Versus

Amarjit Sharma and another Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Ms. Kulwant Kaur, Advocate, for the appellant.

Mr. O.P.Hoshiarpuri and V.K.Sharma, Advocates,
for the respondents.

GURVINDER SINGH GILL J.

1. Defendant-appellant has filed this appeal challenging judgment and decree dated 25.4.2014 passed by learned Additional District Judge, SAS Nagar, Mohali affirming judgment and decree passed in favour of plaintiffs regarding possession of suit property.
2. The respondents-plaintiffs had filed a suit seeking possession of suit property in the shape of two plots measuring $\frac{1}{2}$ marla comprised in Khasra No. 9//6/2/4/1 and 1 marla comprised in Khasra No. 9//6/3/4/2/1 situated in Zirakpur, District SAS Nagar, Mohali and also prayed for grant of permanent injunction restraining the defendants from raising any construction over the suit property and from alienating the same. It is averred in the plaint that while respondent-plaintiff no.1 is owner of plot measuring $\frac{1}{2}$ marla;

respondent-plaintiff no. 2 is owner of plot measuring 1 marla and that both the said plots adjoin each other and both the respondents/plaintiffs had been put into possession of the same by their vendors at the time of registration of sale deeds in their favour and thereafter mutation had also been sanctioned. The respondents-plaintiffs averred that the appellant-defendant in collusion with Ms. Kulwant KK and other persons, with an intention to grab their plots, forcibly started raising construction upon the same while taking benefit of absence of the plaintiffs. When the respondents-plaintiffs came to know about the same, they requested the appellant-defendant and also Ms. Kulwant KK to stop the construction but to no avail.

3. The respondents-plaintiffs were constrained to file civil suit seeking injunction, which was granted to them by the Court of Civil Judge (Junior Division) Rajpura vide order dated 8.2.2007 restraining Ms. Kulwant KK and Jaswant Singh from raising any further construction upon the plots and from mortgaging the said land. The respondents-plaintiffs had also submitted an application to SDM, Dera Bassi wherein Ms. Kulwant KK appeared and stated that she had no concern with the land in question and consequently, the plaintiffs withdrew their suit i.e. Civil Suit No. 69 dated 8.2.2007 on 10.3.2007 so as to file the case against the present appellant-defendant, who as per record is shown to be in possession and was in fact raising illegal construction at the spot. The plaintiffs further asserted that the sale deed dated 9.2.2007 in favour of the defendant is for an area of 60.5 square yards and which is in respect of the land meant for residential purposes whereas the suit property is in the nature of commercial land measuring one and a half marla. The respondents-plaintiffs, thus, asserted that the appellant-defendant had

forcibly occupied their plots by raising construction upon the same and prayed for decree of possession in respect of suit property and also for grant of permanent injunction to restrain defendant from raising any construction upon them and for alienating the same in any manner.

4. The appellant-defendant, in his written statement, took a stand that the area claimed by the plaintiffs does not belong to them and in fact it is the respondents-plaintiffs who want to grab the property belonging to the defendant, which has been duly demarcated by the revenue authorities. The appellant-defendant further stated therein that infact Ms. Kulwant KK happens to be mother of the appellant-defendant and is not a practicing Advocate and had been wrongly impleaded as party in the injunction suit, which was subsequently withdrawn. The appellant-defendant, thus, asserted that the plot with construction is in possession of the defendant and that it is the plaintiffs who must establish through revenue record as regards the exact location and area of their plot.

5. The parties were put to proof on the following issues :-

- “1. Whether the plaintiffs are entitled for possession of the plot as prayed for? OPP
2. Whether the plaintiffs are entitled for permanent injunction as prayed for?OPP
3. Whether suit is not maintainable?OPD
4. Relief.”

6. It may here be mentioned that while Plaintiff led evidence in support of his case, the defendant was proceeded against ex-parte. The learned lower Court,

upon considering the evidence on record, returned its findings on issue no. 1 and 2 in favour of the respondents-plaintiffs and consequently decreed the suit vide judgment and decree dated 17.10.2012. The appellant-defendant preferred an appeal but the same was dismissed by the learned Additional District Judge, SAS Nagar, Mohali vide impugned judgment and decree dated 25.4.2014, which has been challenged by the appellant-defendant by way of filing the appeal.

7. I have heard learned counsel for the parties and have also perused record of the case.
8. The learned counsel for the appellant has vehemently argued that the plaintiffs have been unable to show that the suit property is the one which is owned by them and that the alleged sale deeds in their favour do not pertain to the suit property. The learned counsel has further submitted that in fact it is the defendant, who owns the property in question and the plaintiffs, by way of filing the present suit, are trying to oust him from his own property.
9. I have considered the aforesaid submission.
10. At the outset, it is apposite to refer to the written statement filed by the appellant-defendant wherein the ownership of the respondents-plaintiffs in respect of the property comprised in Khasra No. 9//6/2/4/1 measuring half marla and comprised in Khasra No. 9//6/3/4/2/1 measuring one marla, is virtually admitted and the property owned by the appellant-defendant is specifically stated to be bearing different khasra numbers. The relevant extract from the preliminary objection no. 2 of the written statement is reproduced below for the sake of ready reference :-

“The suit property claimed for relief from this ld. court bears the following Khasra Nos belonging to the Plaintiffs are being reproduced for ready reference to clinch the matter ;

Plaintiffs; Khasra Nos. 9//6/2/4/1 measuring $\frac{1}{2}$ Marla
 9//6/3/4/2/1 measuring 1 Marla
 Total Land; 1. $\frac{1}{2}$ Marla

Defendant; Khasra Nos. 9//6/3/1(0-6), 6/3/5(0-1)
 Total Land; 2 Marla.”

11. I further find that the respondents-plaintiffs, apart from leading oral evidence in their favour, have produced on record the registered sale deeds dated 8.11.2005 and 18.11.1997 as Ex.P-2 and Ex.P-3, which clearly reflect the area of the property to be measuring one and a half marla.
12. There is nothing on record to rebut the aforesaid position regarding ownership of the plaintiffs over the suit property. The respondents-plaintiffs had submitted an application to SDM, Dera Bassi who directed the Tehsildar, Dera Bassi to conduct inquiry and the Tehsildar after visiting the spot in the presence of parties and also after calling the vendors of the parties submitted his report dated 14.3.2007 (Ex.P-7) to the effect that boundaries as mentioned in sale deeds in favour of plaintiffs tally with suit property whereas the boundaries as mentioned in sale deed in favour of appellant-defendant do not tally.
13. Though in the written statement, the appellant-defendant raised a controversy regarding demarcation to the effect that the property where the construction has been raised does not bear the Khasra numbers which the plaintiffs claimed to have purchased vide sale deeds dated 8.11.2005 and 18.11.1997 but there is

no evidence to support the said contention.

14. It will not be out of place to mention here that though an application under Order 9 Rule 13 had been filed by the appellant-defendant before the Trial Court for setting aside the *ex-parte* decree but the same was not pursued. The findings, as recorded by lower Court, have been affirmed by the lower appellate Court as well.
15. In view of the aforesaid concurrent findings and there being nothing on record to justify interference in the same, I do not find any infirmity in the impugned judgment and decree and the same is hereby upheld.
16. There is no merit in this appeal and the same is dismissed.

(Gurvinder Singh Gill)
Judge

16.5.2018
Kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No