

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4109 of 2017(O&M)

Date of Decision:14.9.2018

Ranjit Singh since deceased through LR Kulwant Kaur

---Appellant

vs.

Satnam Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.M.S.Kohli, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 5.5.2017 passed by the Additional District Judge, Kapurthala whereby appeal preferred by the respondent-plaintiff against the judgment and decree dated 4.9.2015 passed by the trial court was accepted, judgment and decree passed by the trial court were reversed and suit for permanent injunction against forcible and illegal interference in possession of the respondent-plaintiff over the suit property has been decreed.

The present lis pertains to land comprised in khasra Nos. 2161/0-2 and 2162/0-2. The respondent-plaintiff claimed herself to be in possession of the suit property being one of the co-sharers to the extent of

1/12th share. The plea of the respondent is that the land in dispute is exclusively used by the respondent for tethering the cattle and has placed chaff, fodder and cutter machine and as such the same is used as 'Haveli'. The appellant-defendants who are co-villagers have no right, title or concern with the suit land but they are trying to dispossess the respondent-plaintiff forcibly and illegally.

The appellant-defendants raised certain preliminary objections, taken note of by the trial court in para 3 of the judgment. On merits, it is averred that Maan Singh was the uncle (masad) of defendants No. 1 and 2 and his wife died during his life time and he died issueless. Defendants No. 1 and 2 and their family members were serving and looking after Sh. Maan Singh. Maan Singh gave his house for residential purpose and 2¼ marlas out of suit plot for using the same as 'Haveli'. Since then, they are using 2¼ marlas as 'Haveli' for tethering cattle and have installed one *toka* machine, constructed one *khurli* and placed '*kup of toori*' in the said plot. Haveli is bounded with boundary wall upto the height of 9 feet and one wooden gate is also installed in the said Haveli. The respondent-plaintiff intentionally has not placed any site plan on record. The correct site plan and the photographs are stated to be attached with the written statement.

The trial court framed issues and permitted the parties 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 rejected claim of the respondent-plaintiff that she is in exclusive possession of the suit property and is entitled to get injunction against alleged forcible and illegal dispossession. Eventually, suit filed by the plaintiff/respondent

was ordered to be dismissed.

As has been noticed hereinbefore, the appeal preferred by the respondent-plaintiff has been allowed by the first Appellate Court.

Counsel for the appellant has assailed the judgment passed by the Court in Appeal primarily on three counts. It is argued that the respondent-plaintiff did not produce any site plan of the property in question. The appellant raised a plea that 2¼ marlas of suit land was given to defendants No. 1 and 2 by Maan Singh but the respondent-plaintiff did not file replication to the written statement, therefore, the facts pleaded in the written statement remained uncontroverted and amounts to admission on the part of respondent-plaintiff. The respondent-plaintiff has failed to prove that she is in exclusive possession of the land in question. The trial court, on a detailed consideration of the materials on record, has rightly rejected plea of the respondent that she is entitled to discretionary and equitable relief of injunction.

I have heard counsel for the appellant and perused the paper book particularly the judgments passed by the courts.

Indisputably, the respondent-plaintiff is co-sharer of suit land to the extent of 1/12th share on the basis of purchase. The defendants before the trial court including the appellant (since deceased) did not claim any right of ownership in the suit land meaning thereby that the respondent-plaintiff has not sought injunction against her co-owners.

The crucial question for determination is whether the respondent-plaintiff has been successful in proving her exclusive possession over the suit land measuring 4 marlas comprising khasra Nos.

2161 and 2162. The respondent also relied upon affidavit Ex. PX on the basis whereof, other co-sharers permitted her to use the suit property. None of the signatories of the affidavit Ex. PX is a party in the present case nor any one appeared in the witness box to deny correctness thereof. One of the witnesses of the appellant admitted that the affidavit bears the signatures and thumb impressions of its executants. This apart, unless the executants of the document has denied its execution, the appellant is no one to challenge correctness thereof.

The Court in Appeal, in para 14 of the judgment, has noticed that Amarjit Singh defendant No. 3 (DW1) who is none else but son of appellant Ranjit Singh (defendant No. 1) admitted in his cross examination that in the land in dispute, electric as well as water connection have been installed in the name of plaintiff. Sucha Singh DW3 also admitted that plaintiff Satnam Kaur is having possession for the past 40 years. In the succeeding para No. 15, court has held that defendants neither placed on record any document nor otherwise proved their possession though they are claiming their possession for the past more than 40 years.

Admittedly, the defendants neither purchased the property in dispute nor inherited or received the same by way of any instrument which can confer any title upon them. Counsel for the appellant has not disputed correctness of factual aspects noticed by the Court in Appeal. He has also not pointed out any materials brought forth in cross examination of the respondent-plaintiff and her witnesses to substantiate plea of the appellant and his co-defendants that they are in possession of 2¼ marlas out of suit land much less for the past about 40 years, as has been sought to be raised

in the written statement. The mere fact that the respondent has admitted that earlier Maan Singh was owner of the suit land is not sufficient to substantiate plea of the appellant that he alongwith defendant No. 2 is in possession of 2¼ marlas of area out of the suit land. As the appellant did not raise any dispute with regard to identity of the suit property which otherwise bears khasra numbers, noticed hereinbefore, failure of the respondent-plaintiff to produce and prove site plan of the property in question is of no legal consequence. Similarly, the fact that in the written statement, the defendants claimed to be in possession of 2¼ marlas of land, failure of the respondent-plaintiff to file replication cannot be taken as admission of their claim particularly in the circumstances that the respondent has claimed her exclusive possession of land measuring 4 marlas comprising khasra Nos. 2161 and 2162. In this view of the matter, contentions raised by counsel for the appellant are not meritorious to convince the court that judgment and decree passed by the Court in Appeal suffer from an error rather perversity warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

(Rekha Mittal)
Judge

14.9.2018
paramjit

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