

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:12.10.2018

RSA No. 5432 of 2017(O&M)

Hari Om and another

---Appellants

vs.

Narain Singh and another

---Respondents

RSA No. 5594 of 2017(O&M)

Hari Om and another

---Appellants

vs.

Narain Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Johan Kumar, Advocate
for the appellants in both the appeals

Rekha Mittal, J.

This order will dispose of RSA Nos. 5432 and 5594 of 2017 as these have emerged out of the same judgments and decrees passed by the Courts and involve identical questions of law and fact for adjudication. For facility of reference, facts are taken from RSA No. 5432 of 2017.

Narain Singh son of late Sh. Fakira respondent No. 1 filed the suit that father of plaintiff and Nathi defendant No. 3 namely Fakira son of Jal Singh was in actual, physical, continuous and uninterrupted possession of land bearing Khewat No. 91/81 min, khatoni no.124/113, khasra No. 203

(0-18) gair mumkin makan as gair marusi much prior to 1970-71. Fakira purchased ownership right in suit land by way of oral sale on payment of Rs. 300/- to Layak Ram son of Sh. Bohru, predecessor in interest of defendants No. 1 and 2 in the year 1965-66 and an entry to this effect was incorporated in column No. 5 of jamabandi for the year 1970-71. Fakira acquired ownership and possessory right in suit land as its absolute owner and got constructed two pucca houses marked with letters 'EDCJHF' shown in red colour in the site plan Annexure P2 and another portion marked with letters 'AEHJB' shown in blue colour, detailed in para 1 of the judgment of trial court. After death of Fakira, Nathi agreed to relinquish his possessory right/Tark Kasht vide agreement to sell for a sale consideration of Rs. 50,000/-. After sale of his half share, defendant No. 3 tried to take possession qua half share of house of the plaintiff in the year 2002 that led to filing of civil suit titled “Narain Singh vs. Nathi” which was decreed in favour of the plaintiff on 18.2.2009 wherein it was held that entries in the revenue record are liable to be corrected in favour of both the parties i.e. plaintiff and defendant No. 3 to the extent of half share each in suit property. The impugned entries appearing in the name of father of defendants No. 1 and 2, Nainpal son of Layak Ram in column of ownership and name of Nathi son of Fakira in column No. 5 as gair marusi are wrong, incorrect, illegal and liable to be corrected and name of plaintiff is required to be recorded in column Nos. 4 and 5 as owner in actual and physical possession to the extent of half share in the suit land.

The suit was contested by defendants No. 1 and 2. It was averred that Sh. Fakira got incorporated wrong entries in the revenue record

in collusion with revenue officials. Layak Ram, grand father of answering defendants never sold the suit land to Fakira. No sale of Rs. 100/- or more could be made without a registered sale deed. Neither plaintiff nor defendant No. 3 has any right or interest with regard to ownership of suit land. Previously Sh. Layak Ram was the owner in possession of the suit land and after his death, Nainpal father of the answering defendants became owner of the same and after death of Nainpal, answering defendants inherited his estate. Further averred that plaintiff is not in permissive possession of portion marked with letters 'EFGD' in the site plan Ex. P1 as held vide judgment and decree dated 30.10.2009. All other material averments of the plaint have been denied with prayer for dismissal of the suit.

Defendant No. 3 filed the written statement raising certain preliminary objections taken note in para 3 of judgment of trial court. On merits, it was submitted that house was constructed by the answering defendant but is being used by him and his brother.

The appellants/defendants filed the counter claim seeking mandatory injunction directing the respondent-plaintiff to deliver vacant possession of suit land on the premise that he is a licensee in the suit property and his licence stands revoked as he has denied ownership of the appellants.

The plaintiff filed reply to the counter claim re-asserting his stand taken in the plaint while controverting plea of the defendants-appellants with regard to his possession as licensee of suit land.

The controversy between the parties led to framing of issues,

reproduced in para 5 of judgment of trial court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties at length in the light of materials on record, the trial court negated plea of the respondent-plaintiff that he is owner of the suit property on the basis of alleged purchase by Fakira on payment of Rs. 300/-. However, it has been held that earlier Fakira was in possession of suit land and later the plaintiff-respondent is in possession of half share of suit land and he is entitle to protect his possession except in due course of law. The Court also rejected plea of the appellants that the respondent-plaintiff is in permissive possession of suit land being licensee of the appellants or their predecessor in interest and eventually counter claim preferred by the appellants was dismissed with the observations that plaintiff being gair marusi to the extent of half share can be evicted in due course of law only.

Appeal preferred by unsuccessful defendants No. 1 and 2 did not find favour with the Additional District Judge, Palwal whereby findings recorded by the trial court have been affirmed without any variance.

The sole submission made by counsel for the appellants is that as the respondent-plaintiff is a licensee in suit property, his licence stands revoked on account of his having denied ownership of the appellants, he is neither entitle to seek equitable relief of injunction nor can be allowed to retain possession of suit land against wishes of his licensor. It is further argued that the courts have committed serious error rather perversity by rejecting counter claim for issuance of direction to the respondent-plaintiff to hand over possession of suit land to the appellants who have been held to be owners thereof by rejecting claim of the respondent-plaintiff qua

ownership of suit land. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Joseph Severance and others vs. Benny Mathew and others 2005(4) RCR (Civil) 559**. Further, reference has been made to judgments of Punjab High Court (Circuit Bench at Delhi) **Messrs. Delhi Gate Service Private Limited, Delhi vs. Messrs. Caltex (India) Limited, New Delhi 1962 PLR 559, Pooran Chand and another vs. Malik Mukhbain Singh 1963 PLR 490** and judgment of this Court **Pritam Kaur vs. Nagar Palika (Municipal Committee), Ratia 1985 (2) PLR 99**. Reference has also been made to judgment of the Calcutta High Court **Prabirendra Nath Nanday and another vs. Narendra Nath Nanday AIR 1985 (Calcutta) 179**.

I have heard counsel for the appellants and perused the paper book particularly the judgments impugned.

Before advertng to the submissions made by counsel for the appellants, it is pertinent to note that there is no quarrel with what has been held in the judgments relied upon by counsel for the appellants with regard to rights and obligations of a licensee qua his licensor. The crucial question involved in the appeal is, whether the appellants have been able to successfully substantiate their plea that the respondent or his predecessor in interest are in permissive possession of suit land being licensee under predecessor in interest of the appellants. The courts have consistently held that materials on record do not establish case of the appellants that the respondent-plaintiff is a licensee in suit land and can be directed to hand over possession thereof to the appellants-defendants. Counsel has failed to point out any materials on record in order to show that findings recorded

by the courts in this regard are the result of misreading of evidence or failure to take into consideration evidence that has material bearing on the question of relationship of licensor and licensee between the parties. No sooner the appellants failed to prove their case that the respondent-plaintiff is a licensee in suit land who is otherwise proved to be in established possession since the time of his predecessor(s) in interest, no error much less perversity can be noticed in the judgments impugned. As such, the judgments relied upon by counsel for the appellants has got no bearing on the facts of the the case at hand.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine. As the appeals have been decided on merits, applications for condonation of delay in filing and refiling of appeal are of academic relevance.

(Rekha Mittal)
Judge

12.10.2018
paramjit

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