

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

RSA No.5783 of 2018 (O&M)

Date of Decision: 10.10.2018

Dharmu and another

.....Appellants

versus

Subhadra Bai and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Abhimanyu Singh, Advocate,
for the appellants.

AMOL RATTAN SINGH, J. (Oral)

By this appeal, the defendants in the suit out of which it arises, have challenged the judgments of the learned trial Court as also the first appellant Court, decreeing the suit of respondents no.1 and 2 herein (the plaintiffs), by which they had sought a decree of permanent and mandatory injunction, restraining the present appellants from interfering in their peaceful possession of the suit property, which is shown to be a house bearing MC Unit no.L-739, fully described in the plaint, situated in Lohar Bazar, Bhiwani. The mandatory injunction sought was that the appellants herein be directed to remove the newly constructed wall described in the site plan that was led by way of evidence and also to remove the gate affixed in that wall, and to remove the idol installed in the open courtyard of the suit premises.

It is to be noticed here that though in the “heading” of the judgment of the trial Court, the suit is shown to be one seeking a declaration, learned counsel for the appellants before this Court, on specific

query, has stated that the said nomenclature is a typographical error, with the suit actually being gone seeking prohibitory and mandatory injunctions.

2. It was the contention of the respondents-plaintiffs that they were otherwise residents of Bhiwani though presently residing at Adilabad, Andhra Pradesh, with the suit property owned by them and the proforma defendants (respondents no.3 to 6 herein), which was in their possession continuously without any interruption.

The suit property was stated to be previously owned by the mother-in-law of the first plaintiff, Rukmani Devi (grandmother of the second plaintiff and the proforma defendants). She is stated to have died on 03.02.1985, with the plaintiffs and the proforma defendants therefore having become owners in possession of the house, by way of natural succession. One Satnarain was stated to be a tenant occupying a bathroom and toilet even during the lifetime of Rukmani Devi, after which he was a tenant of the plaintiffs and the proforma defendants, but had vacated the premises with the whole house therefore being owned by the plaintiffs and the proforma defendants, though they had all gone to Adilabad to earn their livelihood, but used to come to Bhiwani frequently.

3. It was further the case of the plaintiffs that the appellants-defendants were not law abiding persons and wanted to enter the house without any right; and had used filthy language and had scuffled with the plaintiffs one week prior to the institution of the suit (instituted on 08.12.2010), and had also tried to take possession illegally and to change the nature of the property.

It was further contended that during the pendency of the case

they had constructed a wall to the North-East of the property, as described in the site plan led by way of evidence, and had also affixed a gate in that wall and closed the access of the plaintiffs to the house, with an idol also “laid” in the open courtyard, which after the institution of the suit, in any case they had no right to do.

4. Upon notice issued to them, the appellants as also their co-defendants (the remaining three contesting defendants not having filed the present appeal), filed a written statement as also a counter claim stating that the plaintiffs had actually no *locus standi* to file the suit, with them having concealed facts from the court, such facts being that a public temple stood on the suit property, with which Rukmani Devi or her legal heirs were not in any way concerned and as such, the plaintiffs only wanted to create disturbance in the worship offered by the defendants in the temple and that actually the plaintiffs wanted to sell the suit property.

5. They also alleged in the counter claim that they (the said defendants) were residents of Tiwana Pana, Bhiwani, and since the time of their ancestors they had been using the suit property as a public temple where worship was offered.

Hence, they sought a decree against the plaintiffs, restraining them from making any unlawful encroachment or disturbance in the temple, or making any change in the suit property.

6. A replication having been filed by the respondents-plaintiffs controverting the contents of the written statement and the counter claim, the following issues were framed by the learned Civil Judge (Junior Division):-

- “1. Whether the plaintiffs are entitled to the relief of permanent (Prohibitory) injunction as well as mandatory injunction against the defendants on the grounds mentioned in the head note of the amended plaint, as prayed for? OPP
 2. Whether the counter claim filed by defendants is maintainable? OPD
 3. Whether suit of the plaintiffs is not maintainable in the present form? OPD
 4. Whether the plaintiffs have no cause of action to file the present suit? OPD
 5. Whether the plaintiffs are estopped to file the present suit by her own act and conduct? OPD
 6. Whether the suit of the plaintiffs is liable to be dismissed on the ground of non disclosure of true facts? OPD
 7. Relief.”
7. The plaintiffs led oral and documentary evidence, with plaintiff no.2 having testified as PW1 and also having examined the aforementioned Satnarain, as also one Surender, Clerk from the Municipal Council, Bhiwani, and Ghansham Das and Parbat Kiran as Pws3, 4 and 5 respectively and further also examined one Amir Chand Taneja as PW6.

By way of documentary evidence, they produced the following documents, as per the judgment of the trial Court:-

“Site plan	Ex.P1
Rent agreement	Ex.P2
Record	Ex.PW2/A
Water/Sewerage bill	Ex.P3
Assessment register record	Ex.P3/A
House Tax slip	Ex.P4
Electricity bill	Ex.P5
Rent receipt	Ex.P6
Water bill	Exs.P6 to P19

Receipt of PWD	Ex.P20
Judgment of Shri Vinod Jain, Senior Sub-Judge, Bhiwani dated 09.12.1992	Ex.P21
Notice to Rukmani by MC office Bhiwani	Mark-C
Farm no.10 of MC Bhiwani	Mark-D”

8. The contesting defendants examined appellant-defendant no.5 Narayan Singh as DW1, one Manbir Singh as DW2, Kuldeep Singh as DW3, Dalbir as DW4 and one Raj Kumar as DW5. However, by way of documentary evidence, they only produced a site plan Ex.D1 and a report of the Local Commissioner as Ex.D3/D (as per the judgment of the trial Court).

9. Having considered the pleadings and the arguments made before it and having appraised the evidence, the learned trial Court came to the conclusion that the site plan, Ex.P1, was duly proved by Draftsman Amir Chand Taneja, who though in his cross-examination had deposed that he did not visit the site to prepare the site plan, but had otherwise seen the spot and thereafter prepared it.

It was further held by that Court that all the other documents produced by way of evidence by the plaintiffs (rent agreement Ex.P2, water and sewerage bill Ex.P3, assessment register record Ex.P3/A, House Tax slip Ex.P4, electricity bill Ex.P5, rent receipt Ex.P6, water bill Exs.P6 to P19 and an earlier judgment, Ex.P21), proved that the suit property was owned and possessed by Rukmani Devi, in whose name the water and electricity connections were running.

The Municipal Council record in favour of Rukmani Devi and a judgment dated 09.12.1992, vide which the plaintiffs had already been declared to be the legal heirs of Rukmani Devi, and the succession certificate issued in their favour qua her estate, were also referred to by that

Court.

10. As regards the counter claim filed by the present appellants, it was found that they even denied knowledge that the suit property bears MC Unit no.L-739, which was otherwise proved from Ex.P4, with DW1 also having admitted that in the Municipal Councils' record the suit property was shown in the name of Rukmani Devi.

DW2 was also found to have admitted that the plaintiffs and the proforma defendants were relatives of Rukmani Devi.

It was next found by the trial Court that Kuldeep Singh, DW3, who had been appointed as a Local Commissioner, in his cross-examination admitted that he had not given any notice to the plaintiffs before visting the spot.

DW4, Dalbir, Draftsman, had also admitted that he had not given any note that the site plan was prepared as per his inspection report.

The photographer who testified was also found to have admitted that he did not have any receipt regarding photographs taken by him, of the suit property.

11. Consequently, it was held by that Court, on the principal issues, that the plaintiffs had proved that they are owners in possession of the suit property and therefore entitled to the decrees of prohibitory and mandatory injunction as prayed for by them.

In view of the finding on the first two issues, the remaining issues were also decided against the defendants.

12. The present appellants, also their co-defendant Jagmohan, having preferred a first appal before the learned District Judge, Bhiwani, that was dismissed, essentially on the same grounds as were taken by the trial Court to

decree the suit of the plaintiffs in their favour.

13. Before this Court, learned counsel for the appellants submitted that the trial Court wholly mis-appreciated the evidence, including the oral evidence, to the effect that a *mandir* was existent on the suit property, with the plaintiffs not even residing there, and consequently, the findings are wholly perverse.

14. However, having considered the aforesaid argument, though it is very obvious that other than a local commissioner having been appointed, who prepared a report without issuance notice to the respondents/plaintiffs who (as per the memo of parties) are residents of Andhra Pradesh, no evidence was led in the form of any resolution of a Municipal Committee/council, or prior to that of any Gram Panchayat, that the suit premises was a *mandir* in which public worship was offered. Learned counsel though points to the testimony of PW1, wherein he admitted that there is a *mandir* at the site, however, a further perusal of the said testimony shows that he referred to it as a “*gharelu mandir*” (temple used for personal worship).

Though learned counsel has also stated that it could not have been used for personal worship, the respondents/plaintiffs not being residents of the village but of Andhra Pradesh, and has further stated that the original owner of the suit property, i.e. Rukmani Devi, had actually dedicated the said property for the purpose of a *mandir*, no evidence whatsoever in that regard is shown to have been produced before the learned Courts below, even in the form of any person from the public testifying to that effect, far less any resolution of a Municipal Committee/council or a previous Gram Panchayat, to that effect.

15. As regards the plaintiffs residing in Andhra Pradesh, that would

be no ground to hold that they were not owners of the suit property in the face of the documentary evidence led by them before the Courts below, with no document of any gift made by Rukmani Devi in favour of the defendants, or donating the land for public worship, having been produced by the appellants.

As regards their possession over the suit property while living in Andhra Pradesh, the judgments of the Courts below observe that the contention of the plaintiffs was that it was during the pendency of the suit that a wall and a gate was constructed on the suit premises by the appellants and consequently they had sought a decree of mandatory injunction seeking the removal thereof.

Nothing has been pointed out to this Court, in this 2nd appeal, that it was in any manner not proved by the respondents-plaintiffs that were not in possession or that the appellants and their contesting co-defendants could prove that the wall was not built during the pendency of the suit. In fact, no specific argument in that regard has been raised at all before this Court, other than stating that they being residents of Andhra Pradesh, they could not have been in possession of the suit land.

Even that statement, of lack of possession by an absentee land/property owner, has to be rejected, as again nothing has been argued before this Court that the appellants could actually prove their own possession over the suit property, during the absence of the plaintiffs. In fact, had the suit property been used as a place of public worship as contended, then in any case the appellants could not have been in possession thereof, unless they had been appointed as *Purohits/Pujaris* of the *mandir*, which again is not an argument taken at all before this Court.

16. That being so, and the learned Courts below having come to a

finding of fact on the basis of the evidence led, that the suit property was not being used as a *mandir* but was the personal property of the respondents/plaintiffs, which had devolved upon them after the demise of Rukmani Devi, they already having been declared to be her successors by way of a previous court decree, with the electricity connection still standing in the name of Rukmani Devi, and even municipal tax being paid in her name, I see no reason to entertain this 2nd appeal, which is consequently dismissed in *limine*.

10.10.2018

dharamvir/dinesh

**(AMOL RATTAN SINGH)
JUDGE**

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes