

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

**RSA No.1964 of 1988 (O&M)
Date of Decision.03.05.2019**

Sunil Kant

...Appellant

Vs

Bimla Devi (deceased) through LRs

..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant.

Mr. Samarth Sagar, Advocate and
Mr. Sankalp Sagar, Advocate
for the respondent.

-.-

AMIT RAWAL J. (ORAL)

The appellant-plaintiff is in regular second appeal against the concurrent finding of fact. Civil Suit titled as 'Sunil Kant Vs. Bimla Devi' for permanent injunction against the defendant Bimla Devi qua forcible interference into peaceful possession and construction on the basis of site plan Ex.P1 was filed on the premise that the plaintiff purchased part of khasra No.4637/700 contained in khata No.516, 1222 situated at village Talwara vide sale deed dated 09.11.1983 from one Romesh Chander son of Nikka Ram measuring 2 marlas. The defendant had no right in the suit property. Defendant had formed a party of strong persons and threatened to dispossess and demolish the construction, therefore, suit was filed.

Defendant opposed the suit by raising preliminary objection of maintainability on the premise that plaintiff was aware of the previous litigation regarding the suit property between his father Dev Raj Bakshi and the defendant Bimla Devi wherein defendant has

been held to be owner of the land in dispute. The decision of the suit withheld. In fact, suit was filed to delay execution of the decree pending in the Court. In fact, plot in dispute measuring 3 marlas earlier belonged to Nikka Ram son of Jalam of Talwara, who had given the same on monthly rent to Dev Raj Bakshi, father of the plaintiff. Bimla Devi purchased 5 marlas of land out of Khasra No.700 from Nikka through registered sale deed and 5 marlas of land included 3 marlas. Dev Raj Bakshi was tenant of land adjoining to 3 marlas of plot and civil suits titled as 'Bimla Devi vs. Bakshi Dev Raj' and 'Bimla Devi vs. Chanda Singh etc' for recovery of rent and ejectment were filed, which were decided by the trial Court vide judgment and decree dated 17.04.1974 wherein Bimla Devi was held owner of the plot along with plot adjoining on East total measuring 5 marlas but the suit for recovery of the rent was decreed and claim for ejectment was dismissed on the ground that notice under Section 106 of the Transfer of Property Act was not given. Both the tenants Chanda Singh and Dev Raj Bakshi went in appeal but the same were dismissed. After notice under Section 106 of the Transfer of Property Act, two suits for ejectment and recovery of rent were filed. During the pendency of the suits, Dev Raj Bakshi, being a clever person, in order to prevent the ejectment managed to file suit from Romesh Chander in respect of 5 marlas of land titled as 'Romesh Chander Vs. Dev Raj Bakhshi'. However, in the aforementioned proceedings entered into compromise with Bimla Devi and admitted her to be sole and exclusive owner of 5 marlas of land, which included plot of land in dispute. The suit filed by Romesh Chander was dismissed but the

suits for recovery and ejectment were decreed vide judgment and decree dated 30.03.1981 and appeals preferred against the same were also dismissed by the Additional District Judge on 10.09.1983. After dismissal of appeal, Chanda Singh purchased two marlas of plot which was in possession of Bimla Devi, which adjoined to the plot in dispute. Now his son Amar Singh was in possession of two marlas of land.

On receipt of replication, the trial Court framed the following issues:-

- “ 1. Whether the suit is not maintainable in the present form? OPD.*
- 2. Whether there was my previous litigation regarding the suit property in between Dev Raj Bakshi and the Smt. Bimla Devi ? If so to what effect?OPD.*
- 3. Whether the suit is barred by the principle of res judicata? OPD.*
- 4. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD.*
- 5. Whether the plaintiff is owner in possession of the suit property ?OPP.*
- 6.whether the plaintiff is entitled to the injunction prayed for? OPP.*
- 7. Relief.”*

Plaintiff in support of aforementioned evidence examined nine witnesses and brought on record Ex.P1 to P7 whereas defendants examined four witnesses and brought on record Ex.D1 to D11.

The trial Court on the basis of previous pleadings found that plot in question was same and dismissed the suit and so did the

lower Appellate Court.

This Court while admitting the appeal vide order dated 12.11.1988 restrained the respondent from dispossessing the appellant.

Mr. Vikas Mohan Gupta, learned counsel appearing on behalf of the appellant submitted that both the Courts below have committed illegality and perversity by noticing that identity of the property was different. Bimla Devi purchased 5 marlas of land out of khasra No.700 out of 5 kanals 10 marlas from Nikka Ram vide sale deed Ex.PW9/A with different measurement and as per *aks shajra* of 1911-12 proved on record through PW8 Sohan Singh Patwari that before acquisition of total area of khasra No.700 was 5 kanals 10 marlas. Out of this khasra number, 1 kanal 10 marlas was acquired for the road towards the Northern side of this khasra number. He also proved that *tamima* of land purchased by respondent should measure 35 karams from East till 40 karams towards North Western corner as per the sale deed Ex.PW9/A. After acquisition 30 karams increased to 40 karams i.e. 10 karams more added towards West which is in tandem with judgment Ex.D10. There was no dispute with regard to property owned by the respondent. As per judgment Ex.D10, the area of respondent, started, after leaving 10 karams from the Northern Western corner of Khasra No.700 and partly the site in suit is situated at the Northern Western corner of Khasra No.700 and partly in Khasra No.701. Unnecessary importance had been given to the boundaries without giving into the fact that actual land of respondent started after leaving 10 karams from Northern Western Corner and in

fact the boundaries also did not tally. Even assistance of the local commissioner as on today can also be taken as doctrine akin to *res judicata* could not have been applied. The appellant led evidence to show possession of ownership on the basis of the sale deed Ex.P2. Even application for appointment of the local commission was filed but no order was passed.

Per contra, Mr. Samarth Sagar and Mr. Sankalp Sagar, learned counsel appearing for the respondent submitted that in execution application, judgment debtor had filed objections and the revision petition No.1975 of 2002 was filed by Dev Raj Bakshi, which was dismissed vide order dated 20.04.2015 wherein identity of the property was not disputed. Romesh Chander had even made a statement in the previous round of litigation that he had already sold the land. The entry in the jamabandi 1977-78 Ex.D6 showed that Romesh Chander son of Nikka Ram was owner of the area measuring 3 kanals 9 marlas comprised of Khasra No.4637/700. Sunil Kant plaintiff alleged to have purchased the property measuring 3 kanals 9 marlas but failed to prove on record that the plot denoted the suit property measuring 2 marlas after purchase from Romesh Chander. No evidence has been led to identify the suit property. The concurrent finding of fact and law cannot be tinkered with unless and until there is gross illegality and perversity.

I have heard learned counsel for the parties, appraised the paper book, records of courts below and of the view that following Substantial Questions of Law arises for determination by this Court:-

“(i) Whether plaintiff has been able to prove, through

direct and cogent evidence, that 2 marlas of land was other than subject matter of the suit property in suit titled 'Bimla Devi Vs. Dev Raj Bakshi'?

(ii) Whether judgments and decrees of Courts below are perverse?

Concededly, father of the plaintiff, who was arrayed as defendant in ejectment proceedings filed by Bimla Devi lost upto this Court and execution was pending, resulting into revision petition *ibid*. No question of identity of property arose therein. It is not case of the plaintiff that it was some other property than the one in possession of this father. If at all there was dispute with regard to identity of the property, nothing prevented the plaintiff to place on record material that 2 marlas was out of area comprised in khasra No.4637/700. PW3 Mohan Singh in evidence submitted that in order to locate the suit plot measurements were not made from three sides but treated khasra No.696 as pucca point to locate khasra No.4637/700 nor any measurement was taken to ascertain the correct location of khasra No.696. The sale deed Ex.P2 is dated 9.11.1983. PW1 Kuldip Kumar, Overseer, who prepared the site plan Ex.P1, deposed that construction appeared to be 7-8 years old and his statement was recorded in 1985. It is not possible that construction was raised before the sale and therefore, disputed super-structure was raised around 1977-78. It was the same property which was in the name of Dev Raj Bakshi. It was Chanda Singh, who at the instance of his father managed to vacate the site by filing and by raising dispute with regard to identity of the property that 2 marlas of land

was some other land than the one found to be in ownership of Bimla Devi.

Romesh Chander while entering into compromise admitted that Bimla Devi was owner of 5 marlas of land in possession of Dev Raj Bakshi and Chanda Singh. Compromise Ex.DW4/A and Ex.DW4/B is statement of Romesh Chander. All these factors lead to irresistible conclusion that filing of the suit was nothing but an act of greed to keep Bimla Devi, decree holder in previous litigation, away from reaping fruits of decree passed in ejectment suit.

In view of aforementioned circumstances, the Substantial Questions of Law are decided against the appellant and in favour of the respondent. I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below. No ground for interference is made out. Since filing of suit was an attempt to thwart right of Bimla Devi, the second appeal is dismissed with costs of ₹50,000/- to be paid to legal representatives of Bimla Devi (since deceased). If the costs is not deposited as directed by this Court, liberty is granted to seek recovery of the same in accordance with law. Stay granted by this Court stands vacated.

The second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 03, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No