

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3157 of 2003 (O&M)

Date of Decision:26.02.2019

Prabhu Dayal

...Appellant(s)

Versus

Nand Ram and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Brijender Kaushik, Advocate for the appellant.

ANIL KSHETARPAL, J.

CM-8076-C-2003

For the reasons stated in the application, which is supported by an affidavit, delay of 10 days in re-filing the appeal is condoned.

CM stands disposed of.

Main appeal

The plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court, reversing the judgment of the learned trial court.

The plaintiff filed a suit for permanent injunction, claiming that he alongwith proforma defendants are owners in possession of land comprised in Ahata No. 159 which has been wrongly recorded in khasra paimash as Ahata No.161 ghar No.312. In the alternative, the plaintiff also sought a decree for possession.

The defendants contested the suit by pleading their title on the basis of unregistered sale-deed dated 8.6.1984 whereon the father of the plaintiff had signed as a witness. The unregistered sale deed was followed

by a registered sale-deed dated 2.3.1995 executed by Ram Kishan son of Manbhar.

The learned trial court decreed the suit, whereas the learned first appellate court has given cogent reasons, while reversing the judgment of the learned trial court.

The judgment of the learned first appellate court is in detail. However, paras 24 and 26 thereof, which are relevant for decision of the present appeal, are extracted as under:-

“24 The plaintiff brought this suit claiming himself and the proforma defendants to be owners in possession of the land of ahata No.159, mentioned as ahata No.161 in khasra paimash and ghar No.312 in the record of settlement of the year 1947 B.K. He did not give boundaries of this property. He did not describe this property in any other manner. He failed even to put on record a site plan of this property. So, the ground situation of this property was not mentioned in the plaint. Its measurement and area are also missing from the plaint. Ex.P2 describes ahata No.161 ghar No.312 to be in the possession of Dedu in accordance with No.105. It is described as guwara and its measurement is given in the document. Ex.P3, the site plan gives ahata No.159 for ghar No.312. No evidence has been led to reconcile this anomaly. There is no reason appearing on the record to show that the property shown as ahata No.159 ghar No.312 in Ex.P3 is the property described as ahata No.161 ghar No.312 in Ex.P2. Ghar No.312 has ghar No.311 on its west and ghar No.313 on its east. It is shown to have a passage, given ghar No.315, on its south. The property on its north is not shown in Ex.P3, Mark-PA is regarding a property measuring 27 feet in its north and sought and 41 feet 3 inch in its east and 41 feet 6 inch in its west. It has got streets on both the sides and thereafter, there is house of Ranjeet on its east and house of another Prabhu Dayal who is

son of Shiv Ran on its west. It is although, argued that this property of ghar No.312 might have been partitioned leaving streets on the sides of the suit property that fell to the share of the plaintiff and proforma defendants, yet there is no such plea in the plaint or replication and no such reference comes in the evidence. The disputed property described by ahata number and ghar number in the plaint is claimed by plaintiff Prabhu Dayal appearing as PW1 to be the property in dispute shown red in the site plan mark-PA. So, the identity of the suit property as the property described by ahata number and ghar number in the settlement record of 1947 is not established and in the absence of this evidence, the defendants were not required to prove that Manbhar purchased this property from any of the predecessors of the plaintiff. No effort was made by the plaintiff to get suit property demarcated to establish its identity as the property bearing ahata No.159 or 161 and ghar No.312 or a part of the same.”

25. XXX XXX XXX XXX XXX
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26. *The plaintiff Prabhu Daya appearing as PW1 has admitted that the possession of the suit land was taken from him by the defendants in their absence when they had come to the court to file the suit. Had it been so, the plaintiff in his replication should have denied the allegations of the defendants made in the written statement that defendant No.1 was in possession of the suit property since 8.6.1984. He should have at least pleaded that the possession was taken from him in his absence when he came to the court to file this suit. This plea is missing in the replication filed by the plaintiff to the written statement of the answering defendants. Learned trial court has considered the writing Ex.DW3/A. It is in the shape of memorandum regarding the purchase of the suit property by Nand Ram from Manbhar. Learned trial court has considered the evidence on record and has come to the conclusion that the signature of the father of the plaintiff on*

this entry are genuine. However, he has held that this document could not be treated as a sale deed. Learned trial court has however observed that this document could be taken into consideration for collateral purpose i.e. to prove the possession of defendant Nand Ram over the suit property. So, this document by way of which defendant No.1 Nand ram took possession of the suit property from Manbhar is attested by the father of the plaintiff. The plaintiff did not come to the court with clean hands and nowhere claimed in the pleadings that the possession was taken from him after filing of the suit. It is clearly shown on the record that the plaintiff was not in possession of the suit land on the date of filing of the suit. It is not a case where the plaintiff was dispossessed in haste. The plaintiff was not in possession of the suit property since long and his suit for permanent injunction was certainly not maintainable.”

Learned counsel for the appellant has submitted that title of Manbhar, predecessor-in-interest of defendants No.2 and 3, has not been proved. Hence, he has submitted that the learned first appellate court has erred in dismissing the suit while reversing the judgment of the learned trial court.

This Court has heard the submissions.

In the present case, there is a concurrent findings of both the courts below that Banwari Lal, predecessor-in-interest of the plaintiff-appellant, had signed the unregistered sale-deed dated 8.6.1984, which was followed by a registered sale-deed. Once the father of the plaintiff had signed the unregistered sale-deed as a witness, he acknowledged Manbhar to be owner of the property. Hence, the plaintiff, who is successor-in-interest of Late Shri Banwari Lal, cannot now be permitted to turn around and plead that ownership of Manbhar is not proved. The reasons recorded

by the learned first appellate court are cogent.

Learned counsel for the appellant although made sincere attempt but could not draw attention of the Court to any substantive error or perversity in the impugned judgment of the learned first appellate court.

In view of the above, there is no ground to interfere. Hence, regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

26.02.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No