

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2130 of 2019

Date of Decision:09.07.2019

Sukhdev Singh and others

.....APPELLANTS

Vs.

Suba Singh

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Surinder Garg, Advocate for the appellants.

DR. RAVI RANJAN, J.(Oral Judgment)

This appeal has been preferred by the plaintiffs-appellants assailing the Judgment and Decree dated 23.01.2019 passed by the Additional District Judge, Faridkot in Civil Appeal No.RT52 of 7.10.17/4.5.2018, by which the First Appellate Court has affirmed the Judgment and Decree dated 04.09.2017 passed by the Civil Judge (Senior Division), Faridkot partly decreeing and partly dismissing the suit.

Short facts necessary for consideration of the *lis* stand enumerated as under:-

The plaintiffs filed a suit for declaration to the effect that they are owners in possession of the land measuring 1 kanal 16 marlas of land bearing Khasra No.448 Khatoni No.121 Khewat No.576 and land measuring 0 kanal 18 marlas, bearing Khasra No.449/0-7, 450/0-11, khatoni No.304 Khewat No.147, situated at village Jalalaeana, Tehsil and District Faridkot, as per copy of the jamabandi for the year 2006-07 and for consequential relief of recovery of possession of about 06 marlas of land abutting the part of Khasra No.448 and

449, as shown in the site plan attached with the plaint towards the Eastern side and the house constructed in Khasra No.448 and 449 as shown in the ABCD in site plan attached and also a decree of permanent injunction restraining the defendant from alienating/transferring 06 marlas of the aforesaid land to any person by sale, mortgage, gift, collusive decree, exchange, or any other mode of transfer of possession of land alongwith constructed portion as shown in the site plain.

The plaintiffs claimed themselves to be the joint owners in possession of 1 kanal 16 marlas of land bearing Khasra No.448 Khatoni No.121 Khewat No.57 as per jamabandi for the year 2006-07. They are also owners in possession alongwith Punjab State in Khasra No.449/0-7 and 450/0-11. They claimed that defendant does not have any concern or title in the suit land. According to the plaintiffs, they have constructed one house shown as ABCD over the suit land and about 4-5 years back. They let it out to the defendant at monthly rent of Rs.1,000/-. However, the defendant never paid the rent. Thus, he was in illegal possession of the house concerned constructed over 06 marlas of land towards eastern side of the house of the plaintiff shown as ABCD in the site plan. The plaintiffs asked the defendant to accept the ownership and the claim of the plaintiffs but he refused. Now the defendant is intending to alienate or incumber the concerned house (shown as ABCD in the site plan) to some other person forcibly without any right over to it. Hence, the Civil Suit was filed.

The defendant contested the suit by filing written statement denying the landlord and tenant relationship between the plaintiffs and the defendant over the house constructed in 06 marlas towards eastern side of the house of the plaintiffs. It was also alleged that no notice under Section 106 of Transfer of

property Act was served upon the defendant before filing the suit and as per the revenue records, he was to be the owner to the extent of 5/9 share out of Khasra Nos.449 and 450. Moreover, as per the site plan placed on record by the plaintiffs, Paramjit Kaur is also shown to be in illegal possession of the house in dispute but she has not been impleaded, thus, the suit was liable to be dismissed for non-joinder of necessary party.

It was further averred in the written statement that plaintiff No.4 was neither owner nor in possession of the suit property, therefore, he had no *locus standi* to file the suit. The defendant alongwith Paramjit Kaur is in possession of the house which is situated within Lal Lakeer of Abadi of village Jalaleana. The defendant has raised construction therein as shown in the site plan attached with the written statement constructed more than 20 years ago. He also got installed electricity etc. and he is the exclusive owner in possession of the said house. He has taken alternative plea that even if the defendant is found to be in possession of any area of the plaintiffs, then he would become owner of that area on the basis of adverse possession because his possession was open, hostile, exclusive, peaceful, continuous and uninterrupted for the last more than 20 years.

The Trial Court, upon consideration of the rival pleadings framed following issues:-

“1. Whether the plaintiff is entitled for declaration and injunction against alienation and suit land”
OPP

2. Whether there is no relationship of landlord and tenant between the plaintiffs and defendant? OPD

2-A Whether the defendant has become the owner of suit land by way of adverse possession? OPD
(additional issue framed vide order dated 18.02.2013).

3. Whether the suit is hit by absence of notice u/s 106 of Transfer of Property Act, 1987 and unclean hands?
OPD

4. Relief.”

Issues No.1, 2 and 2-A was taken up together for consideration being interconnected.

Let it be noted here that at the time of consideration of the injunction petition, Local Commissioner (Sadar Kanugo) was appointed to demarcate the Khasra Nos.448, 449 and 450 as well as properties of the plaintiffs and the defendant clarifying the Red Line. He had submitted his report and objections were filed. However, the Trial Court, after considering the objections filed by the defendant against the report Ex.PW3/A of the Local Commissioner set it aside vide order 04.09.2017 because the Commissioner failed to comply with the directions of the Court and did not demarcate the Khasra Nos, 448, 449 and 450 as well as properties of the plaintiffs and the defendant clarifying the Red Line. It appears that on earlier occasion, the suit was decreed without considering the report of Commissioner but in appeal, the said Judgment and Decree was set aside and the matter was remitted back to the Trial Court to consider the report of the Local Commissioner and then pass the Judgment. The plaintiffs' case of landlord and tenant relationship between the plaintiffs and the defendant was not accepted in view of lack of any cogent evidence led by the plaintiffs either documentary or oral. The objection taken by the defendant of not receiving any notice under Section 106 of the Transfer of Property Act, was also rejected in the absence of any proved lease or agreement or contract between the plaintiffs and the defendant.

The Trial Court, on the basis of materials available on record and after hearing both the parties, has decreed the suit holding the plaintiffs to be the

owner in possession of Khasra Nos, 448 and 449 but, at the same time, a finding has also been recorded that plaintiffs failed to prove on record that 06 marlas of land upon which the defendant has constructed his house, is part of Khasra Nos.448 and 449. Though the plea of perfecting the title by adverse possession taken by the defendant has also been declined but at the same time, even though the plaintiffs succeeded in proving the ownership of Khasra Nos. 448, 449 and 450 to the extent of their share, the consequential relief of possession and injunction restraining the defendant from alienating and transferring the 06 marlas of suit land, as discussed above. was declined because the plaintiffs were not been able to show that the said land was part of Khasra Nos. 448 or 449 owned by him.

Both the parties preferred the appeals against the Judgment and Decree. Civil Appeal No.RT52/2017 preferred by the plaintiffs was heard alongwith the Civil Appeal No.RT44/2017 filed by the defendant.

The Appellate Court, after hearing both the parties, dismissed both the appeals upholding the decision of the Trial Court.

In the aforesaid background of the factual matrix discussed hereinabove, I have heard learned counsel for the appellants and have perused the records of this case.

From the perusal of both the Judgments, it appears that point of controversy between the parties is about 06 marlas of land abutting Plot Nos.448 and 449 which the plaintiffs claims to be part thereof but the defendant's claim that they are within the Lal Lakeer and they have constructed the house.

The suit of the plaintiffs has been decreed holding them to be the owner in possession of the Plot Nos. 448, 449 and 450 but at the same time, it

could not be proved there exists a landlord and tenant relationship between the plaintiffs and the defendant and 06 marlas of land upon which the defendant has been raised construction, is part of Plot Nos. 448 and 449. Once this has been held, the plaintiffs cannot be held to be the owner in possession of that 06 marlas of land and since it is admitted that the defendant is in possession thereof. Thus, no decree of permanent injunction can be passed against the defendant restraining them not to alienate or incumber the property.

The report of the Local Commissioner, as it lacks clarity and was not in complete compliance of the direction given by the Court, has already been rejected.

Thus, learned counsel for the appellants has not been able to demonstrate from the records that there is any material on record to prove the following:

Firstly, that 06 marlas of land(suit property) is part of Plot Nos. 448 or 449 and secondly, that there existed landlord and tenant relationship between the plaintiffs and the defendant. Once there is lack of evidence showing that, the Judgments and Decrees passed by the Courts below cannot be faulted with. That apart, even if it is assumed for the time being that the defendant was tenant of plaintiffs, in such case, the plaintiffs could have filed a suit for ejectment of the tenant but he has not filed such suit rather he is only seeking permanent injunction against the defendant from alienating the suit property or incumbering it. However, in view of the fact that the plaintiffs could not prove that they are owner in possession of that 06 marlas of land, in my considered view, both the Courts below have correctly held that no decree of permanent injunction can be passed in the facts and circumstances of the case against the defendant.

In the result, this appeal being devoid of any merit, is dismissed.

(DR. RAVI RANJAN)
JUDGE

09.07.2019
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No