

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

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Date of decision: 30.09.2019

RSA 3840 of 1998 (O&M)

Jagir Singh

.....Appellant

Versus

Rattan Singh and others

.....Respondents

RSA 3844 of 1998 (O&M)

Surjit Ram and others

.....Appellants

Versus

Rattan Singh etc.

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. O P Goyal, Senior Advocate with
Mr. Sanjeev Kumar Sharma, Advocate
for the appellant (s)

Mr. Viney Saini, Advocate for
Mr. G S Nagra, Advocate
for respondent No. 1

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as identical questions of law and facts are involved for adjudication. For facility of reference, facts are taken from RSA 3840 of 1998.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for mandatory injunction directing the appellant/defendant to surrender vacant possession of the suit house, detailed in head-note of the plaint, was decreed by the trial Court

vide judgment and decree dated 04.08.1993 and appeal filed by the unsuccessful defendant was dismissed by the Additional District Judge, Kapurthala vide judgment and decree dated 04.09.1998.

Respondent/plaintiff - Rattan Singh claimed himself to be owner of the suit property on the basis of allotment made in the year 1956 after floods in 1955. It is averred that his sons were born in the suit house and his mother also died when the family was residing in the suit house. The house in dispute was given to Jagir Singh - defendant No. 1, a close relative of the family whose father died during partition in the year 1947. Jagir Singh was brought up by the respondent/plaintiff. Defendant No. 2 asked the respondent/plaintiff to allow his son defendant No. 3 – Surjit Ram to use the shop for tailoring till the plaintiff wanted to use the same for his own use and occupation. The defendants agreed to surrender possession of the premises in dispute at the request of the plaintiff. The plaintiff is in service of the police department at Delhi and wants to shift his son to the suit house and open a shop of furniture for his son in the premises in dispute.

Defendants No. 2 and 3 filed the written statement stating therein that the suit is liable to be stayed under the provisions of Section 10 of the Code of Civil Procedure, 1908 (in short, 'the Code') as defendant No. 2 filed the suit against the plaintiff and defendant No. 1 and the matter directly and substantially in issue is the same in both the suits. Defendant No. 2 purchased the suit property measuring 8 x 12 feet from defendant No. 1 vide agreement dated 01.07.1989 for a sum of Rs.4,500/-. He got constructed a shop over the land in dispute after spending huge amount.

Defendants No. 2 and 3 are in possession of the suit property in dispute where they are doing the business of tailoring. On northern side of the shop, there is shop of brother of the plaintiff and intervening wall of the shop in dispute is common with the shop of plaintiff's brother. The plaintiff served a registered notice upon defendant No. 3 on 31.03.1992 whereby he agreed to exchange the shop in dispute with newly constructed shop by the plaintiff. He raised objections that the suit is not maintainable in the present form and also the plaintiff is estopped by his act and conduct from filing the suit.

The trial Court framed issues, reproduced in para 4 of the judgment of the said Court. The evidence adduced by the parties finds reference in paras 5 and 6 of the judgment of trial Court.

The trial Court, in view of observations recorded in para 11 of the judgment upheld plea of the respondent/plaintiff that he is owner of the suit property and entitled to recover its possession by way of mandatory injunction and defendants were directed to vacate the premises in dispute by removing malba of the shop in dispute constructed by defendants No. 2 and 3.

Two separate appeals, one filed by defendants No. 2 and 3 (CA 291 of 21.08.1993) and other by Jagir Singh (CA 300 of 27.08.1993) were disposed of vide common judgment and decree dated 04.09.1998 passed by the Additional District Judge, Kapurthala whereby findings of the trial Court were affirmed without any variance.

Counsel for the appellant would argue that the respondent/plaintiff staked his claim to recover possession of the suit

property by asserting his title thereto, on the basis of allotment made in the year 1956. It is argued that neither in the plaint, there is any reference to the date of allotment or authority/department that made allotment of the disputed property in his favour nor did he examine any witness to prove that either the suit house or land underneath thereof was allotted to Rattan Singh. It is further argued that the respondent/plaintiff produced documents with regard to birth of his sons in Shekupur Colony and death of his mother in the aforesaid colony but those documents cannot be connected with the house in question. It is further argued that the Courts have relied upon document Ex.P1, entry in the assessment register maintained by Municipal Committee, Kapurthala for the years ending 1989-90, 1990-91, 1991-92 and 1992-93 but entry in the assessment register is not a document of title and the said fact has been so admitted by witness from the Municipal Committee, Kapurthala, examined by the respondent/plaintiff. It is further argued that as the respondent/plaintiff has failed to prove his ownership of the suit property, the Courts have committed gross error rather perversity by allowing relief of mandatory injunction directing the defendants to hand over vacant possession of the suit property.

Counsel representing the respondent/plaintiff has supported consistent findings recorded by the Courts with the submissions that the suit property was allotted to the respondent/plaintiff in the year 1956 and he remained in possession thereof until he allowed Jagir Singh - defendant No. 1 to take care of the suit property in his absence as Rattan Singh was posted in police department at Delhi. However, he has fairly conceded that only evidence with regard to ownership of the disputed property produced by the

respondent is the entry in assessment register Ex.P1 proved by official of the Municipal Committee, Kapurthala. It is argued that even the defendants/appellants have failed to prove that they are owners of the suit property and entitle to retain its possession.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the respondent/plaintiff staked his claim for recovery of possession of suit property by way of mandatory injunction alleging that he is owner of the suit property on the basis of allotment made in the year 1956 and defendant No. 1- Jagir Singh, being a relative of the plaintiff is merely a licensee in the suit property, therefore, the respondent/plaintiff is entitle to recover its possession from Jagir Singh and the persons sitting there on his behalf. No document with regard to allotment in favour of the respondent/plaintiff has been produced. The respondent has not even given particulars of any such allotment made to him. That being so, the respondent/plaintiff has failed to prove his ownership of the suit property.

Counsel for the respondent/plaintiff has fairly conceded that the Courts have relied upon document Ex.P1, a copy of the assessment register to uphold plea of the respondent with regard to his ownership of suit property. Counsel for the respondent is not in a position to refute contention of the appellant that entry in the assessment register maintained by the Municipal Committee, Kapurthala is not a document of title.

Perusal of cross examination of Rattan Singh (PW3) would reveal that he did not approach the Municipal Committee for making an

entry but it was prepared by the Municipal Committee employees during assessment/survey for house tax. He stated that when the officers/employees of the Municipal Committee came for the purpose of survey, they met him and made enquiry. He told them that he was owner of the disputed property and they made entry in their records. No document regarding title was shown by him to them at the time of survey/enquiry. The facts aforesaid elicited in cross examination of respondent -Rattan Singh make it evident the basis of making entry in the assessment register. That being so, the entry in assessment register, otherwise loses its evidential value to prove ownership of respondent/plaintiff.

This apart, in document Ex.P1 that appears to have been prepared on 1st April, 1992, there is reference to identification number of the property and construction being one room and one kitchen. In the suit, there is no reference to any such number. The construction existing on the spot is stated to be more than what has been mentioned in the assessment register. The documents produced by the respondent in respect of birth of his sons and death of his mother in Shekupur Colony are not at all sufficient to connect the documents with the suit property much less prove ownership of the respondent/plaintiff of the suit house. No sooner, the respondent/plaintiff failed to establish his ownership of the suit property, by no stretch of imagination, he can be heard to say that he is entitled to recover possession of suit property by way of mandatory injunction. In this view of the matter, I find merit in contention of the appellant that the judgments and decrees passed by the Courts suffer from perversity and liable to be set aside.

In view of what has been discussed hereinbefore, the appeals are allowed, judgments and decrees passed by the Courts are set aside. The suit for mandatory injunction for recovery of vacant possession of the suit property is dismissed with costs throughout.

(Rekha Mittal)
Judge

30.09.2019
Mohan Bimbura

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