

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

123

CR No.2678 of 2019

Date of decision:30.5.2019

Mohinder Singh

... Petitioner

versus

Dhiraj Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Gaurav Sharma, Advocate,  
for the petitioner

...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner challenges the judgment and decree passed by the learned Additional Civil Judge (Senior Division), Barnala, dated 30.1.2019, passed in Civil Suit no.119 dated 6.10.2016, instituted by the respondent herein, the said suit being one seeking relief under Section 6 of the Specific Relief Act, 1963.

The respondent-plaintiffs' contention was that it already having been settled in a previous *lis* (Civil Suit no.1386 of 20.5.2004, decided on 22.8.2007 by the learned trial Court), that he was in possession of the suit property, with that decree having eventually been upheld upto this Court in RSA no.898 of 2009 (filed by the present petitioner) on 14.8.2004, the petitioner herein was interfering in possession of the same plot and had in fact dislodged the respondent-plaintiff therefrom on 9.7.2016

Hence, he sought that he may be put back in possession of the plot in question.

2. The petitioner-defendants' stand, as per the impugned judgment of the learned trial Court, is seen to be that the respondent-plaintiff had in fact even filed an application before the SSP, Barnala, on 12.7.2016, in which the DSP gave a report that "there is main gate installed on the site of street and the keys of the lock is available with the defendant", with the plaintiff having concealed those facts.

It was further stated by the petitioner-defendant that the property in dispute was situated in '*Khasra*' no.240//24, with there being no contention on behalf of the respondent-plaintiff that the plot was situate in '*Khasra*' no.14.

3. On query to learned counsel for the petitioner, he has in fact even produced the written statement filed by the petitioner to the plaint (which is seen to be in *Gurmukhi*), and he has not refuted what has been recorded immediately hereinabove. He specifically states that the petitioners' contention is that the plot that he is in occupation of, is situate in '*Khasra*' no.14.

4. A perusal of the written statement as has been produced in Court, shows that the petitioner-defendant had also taken a stand that though there was an entry in the revenue record with regard to the plot in question, the numbers mentioned in such record had been concealed by the respondent-plaintiff.

5. Upon a replication having been filed by the respondent-plaintiff to the aforesaid written statement, the following issues were framed by the learned trial Court:-

“1. Whether the plaintiff is entitled to the relief of possession of plot in question as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the suit of the plaintiff has no cause of action or locus standi to file the present suit? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
5. Relief.”

Parties led evidence before that Court, in the form of documents, as also with the respondent-plaintiff having testifying as PW1. One Gurjit Singh who was examined by him as PW2, was found to have brought the record.

An application dated 9.7.2016, as also the application dated 12.7.2016, addressed to the SSP, Barnala, by him, alongwith the report dated 16.8.2016, were also exhibited.

The petitioner herein (defendant), also examined himself and reiterated the contents of his written statement.

6. Upon appraising the aforesaid evidence, the learned trial Court recorded a finding that even the present petitioner-defendant could not deny that there was previous *lis* between the parties, in the form of Civil Suit no.1386 dated 20.5.2004, which had already been decided and the appeal against such decision also dismissed.

It was also noticed that he had, of course, denied that he had taken forcible possession of the plot on 9.7.2016, though he admitted that an application had been filed before the SHO City, Barnala, by the plaintiff, seeking to fill in earth in the plot.

It was further noticed that it was also admitted that the suit

property was located within the “*Lal Lakir*”.

7. On the aforesaid evidence, it was held by that Court that it was proved that the respondent-plaintiff was in possession of the plot and that the defendant (present petitioner) had taken possession of the same forcibly, and therefore the plaintiff was entitled to be put back in possession.

Consequently, the suit of the respondent-plaintiff was decreed.

8. Before this Court, learned counsel for the petitioner-defendant submits that the petitioners' specific contention is that the plot that he is in occupation of is situate in '*Khasra*' no.14, and not in *Khata Khatauni* no.114/257 to 259, bearing '*Khasra*' no.240//15/1 *min*/1-18, to the extent of 23/458 share situated in the area of Barnala (as was described as the suit property by the respondent-plaintiff in the previous *lis*, i.e. Civil Suit no.1386 of 20.5.2004).

He therefore submits that the learned trial Court has come to an absolutely perverse finding of fact qua the description of the suit property itself.

9. He next submits that one Ravinder had sold his share falling in '*Khasra*' no. 240/1 '*Killa*' no. 17/1-2, 16/2/4-18, 15/1*min*/5-8 to several persons, including to one Parveen Talwar, to the extent of a 13/228<sup>th</sup> share, the total holding being 11 '*Kanals*' and 8 '*Marlas*', with the said person having sold some share in the suit land to the respondent-plaintiff.

10. He further submits that as regards the petitioner, he purchased the suit land from one Sohan Lal, to the extent of 11 '*Marlas*' out of a holding of 03 *Kanals* and 11 *Marlas*.

Still further, he submits that even though the petitioner also purchased only shares to the extent of 11 '*Marlas*', the '*Khasra*' numbers in

which the petitioner purchased the shares are completely different to those in which the respondent purchased the suit land.

11. Having considered the matter, it is seen that the respondent-plaintiff had based his claim in the present suit filed under Section 6 of the Specific Relief Act, 1963, on the basis of the decree passed in his favour in Civil Suit No. 1386 of 20.05.2004, with that judgment and decree having become final up-to this Court by way of RSA No. 898 of 2009.

The case file of RSA No. 898 of 2009 having been called for by this Court, it is seen that the suit land was described therein (as per the judgment of the trial Court in that *lis*), to be measuring 11 '*Kanals*' and 08 '*Marlas*', contained in *Khasra* no.240//15/1 *min*/1-18 to the extent of a 23/458<sup>th</sup> share - (taken from paragraph 02 of the judgment of the trial Court in that *lis*, dated 22.08.2007).

The petitioners' contention herein being that his land is contained in '*Khasra*' no. 14 only, in the opinion of this Court, this petition can be disposed of in *limine* itself, with a direction that in any execution proceedings initiated by the respondent-plaintiff (decree-holder), his claim would naturally be limited to any land falling within '*Khata Khatauni*' no. 114/257 to 259, bearing '*Khasra*' no.240//15/1*min*/1-18 to the extent of a 23/458<sup>th</sup> share, situated in the area of Barnala. Land contained in '*Khasra*' no.14 would not be the subject matter of execution proceedings, because it is seen even from the impugned judgment, as also a copy of the plaint as has been produced in Court by learned counsel for the petitioner, that no '*Khasra*' number has been mentioned in the plaint by the respondent-plaintiff (in the present *lis*), with him only having relied upon the judgment and decree issued in Civil Suit No. 1386 dated 20.05.2004 (reference

paragraph 2 of his plaint).

Consequently, this petition is disposed of in the aforesaid terms, but since it has been disposed of in *limine* without issuing notice to the respondent-plaintiff, he would be at liberty to point out any factual error in this order of this Court, by filing an appropriate application.

May 30, 2019  
pk/nitin

(AMOL RATTAN SINGH)  
JUDGE

|                           |     |
|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | Yes |