

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

RSA-4715-2010(O&M)

Date of decision:-6.8.2019

Bije Singh (since deceased) represented through his legal heirs

...Appellant

Versus

Banwari and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Amit Jain, Advocate
for the appellant.

Mr.Vivek Khatri, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Bije Singh had brought a suit for possession against defendants Banwari, Ram Singh, Devi Lal, Patwari, Mohinder Singh and Pat Ram impleading his brothers Balbir Singh and Sheo Singh as proforma defendants.

As per the case of the plaintiff, he along with his brothers Balbir Singh and Sheo Singh, proforma defendants No.6 and 7 had

purchased plots No.574(1-0), 578 (1-2) and 579(1-2) total land measuring 3 kanals 4 marlas vide a registered sale deed No.1407 dated 22.10.1964; that they were delivered possession of the said plots and they remained in peaceful possession thereof. However, defendants No.1 and 2 illegally and unauthorizedly took possession of plot No.578 and 579 about seven years back and enclosed it by a boundary wall; that the plaintiff and proforma defendants had filed a Civil Suit No.505 of 1995, however it was dismissed; that the appeal preferred by them against the said judgment and decree also met with the same fate. Nevertheless the plaintiff and proforma defendants remained owners of the plot with which defendants No.1 to 5 have no concern; however defendants No.3 to 5 forged and fabricated the revenue record showing possession of defendants No.1 and 2 over those plots; that no notice of change of entries in the khasra girdawari was ever given to the plaintiff or proforma defendants, therefore the alleged change of khasra girdawari entries is illegal, null and void and without jurisdiction; that the plots in question can easily fetch an amount of Rs.500/- per month if given on rent to some person, the plaintiff claimed Rs.500/- as damages from 1.7.2001 to 31.7.2001. According to the plaintiff, the possession of defendants No.1 and 2 over these plots is as trespassers and they have no right in law and equity to remain in possession; that when the defendants refused to accept the claim of the plaintiff and to hand over possession of the

suit land to him, feeling aggrieved, he brought the suit in question seeking possession by demolition of boundary wall and Kotha in plots No.578 and 579 and for grant of mesne profits from the date of suit till the date of eviction along with damages of Rs.500/- per month.

On notice, defendants No.1 to 3 had appeared and filed a joint written statement contesting the suit. *Inter alia*, they had raised preliminary objections that the suit was false, frivolous and vexatious; that no cause of action arose to the plaintiff to bring the suit; that the suit was not maintainable and was time barred; that the Court fee affixed on the plaint was insufficient; that the suit was bad on account of non-joinder and mis-joinder of necessary parties; that the answering defendants had purchased the suit land from Smt.Chawli etc. vide sale deed dated 3.7.1979, who had purchased the same from one Bagrawat; that mutation of inheritance was sanctioned on 23.5.1972 and the answering defendants have been in possession thereof since 23.5.1972. On merits, the answering defendants had denied that the suit land had been purchased by the plaintiff and proforma defendants vide registered sale deed No.1407 dated 22.10.1964 or that the possession had been delivered to them at the spot. The answering defendants denied that their possession is unauthorized or as trespassers. According to them, khasra girdawari of the plot in dispute was wrongly continuing in the names of Aydan,

Ram Chander and Krishan Lal; that before changing the khasra girdawari in favour of the answering defendants, a proper notice was served upon such persons, but since they had left the village long back, therefore the entries in the khasra girdawari were correctly changed in favour of the answering defendants and there was no necessity of serving any notice either to the plaintiff or proforma defendants in that matter. In the end, such defendants prayed for dismissal of the suit.

It may be mentioned here that defendants No.4 to 7 were proceeded against exparte on different dates.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether plaintiff and proforma defendants are owners of suit plots? OPP.
2. Whether plaintiff is entitled to relief of possession in respect of suit plots by demolition boundary wall? OPP.
3. Whether plaintiff is entitled to damages to the tune of Rs.500/-? OPP.
4. Whether plaintiff is entitled to relief of permanent injunction as prayed for? OPP.

5. Whether suit is not maintainable in its present form? OPD.
6. Whether the plaintiff has no cause of action and no locus standi to file the present suit? OPD.
7. Whether proper Court fees has not been affixed on plaint? OPD.
8. Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD.
9. Whether plaintiff has not come to the Court with clean hands, if so, its effect? OPD.
10. Relief.

In order to prove his case, the plaintiff got his statement recorded as PW2 besides examining Sh.Krishan Kumar as PW1 and Sh.Mahaveer Parshad as PW3 and tendered into evidence certain documents.

On the other hand, the defendants had examined Sh.Ram Singh as DW1 besides tendering certain documents. It is pertinent to mention here that applications for additional evidence moved on behalf of the defendants were allowed and the defendants also tendered into evidence certain documents.

After hearing learned counsel for the parties, the trial Court decided issues No.1 to 4 against the plaintiff, issues No.5 and 6 in favour of the plaintiff and against the defendants, issue No.7 in favour of the plaintiff and against the defendants, issue No.8 against

the defendants, issue No.9 against the defendants. Resultantly, suit of the plaintiffs was dismissed. This was so done vide judgment and decree dated 20.9.2007.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Hisar which was assigned to Additional District Judge, Hisar, who vide judgment and decree dated 20.5.2010 dismissed the same.

Not satisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside.

On getting notice of regular second appeal, the respondents No.1 and 2 have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

A perusal of the judgment passed by the trial Court goes to show that on analysis of oral as well as documentary evidence brought on file by the contestants and considering the facts and circumstances of the case, the trial Court found that there was a judicial finding regarding ownership of the plaintiff as well as proforma defendants over plot No.578 and 579; that vide judgment Ex.D2 in the previous suit between the parties, the trial Court had

observed that the plaintiffs at that time could not succeed in proving their possession and finding of possession had not been reversed till date; that vide Ex.D9 and Ex.D16 Smt.Chawli etc. were in exclusive possession of plot No.578 and 579 and vide Ex.D17, the land measuring 24 kanals 19 marlas was mutated in favour of defendants No.1 and 2 on the basis of sale by Smt.Chawli etc. in their favour; that though ownership of defendants No.1 and 2 has been shown in Ex.D10, Ex.D11 and Ex.D12 but in the column of cultivation, the possession of Ram Chander, Aydan and Krishan Lal had been shown; however defendants No.1 and 2 had got the correction made in such column so as to reflect their names to be in exclusive possession of plot No.578 and 579 in place of Ram Chander etc. The trial Court has non-suited the plaintiff by giving reasoning contained in para No.18 of the judgment, which for ready reference is being reproduced as under:

18. The possession of the plaintiff were not held vide Ex.D2, Ex.D3 , Ex.D4 and Ex.D5. The plaintiff has not come with complete clean hands in the court. He filed the first suit in the year 1995 and if we go through para No.2 of the present suit he was not in possession of Plot No. 578 and 579 in 1995. But he sought the relief of permanent injunction in the suit filed in the year 1995 which he lost vide Ex.D2. Hence the pleading stated in para No.2 of the present suit that the possession of the plot was taken by defendants seven years back (suit filed in 2001) but this fact was not mentioned at the time of filing of the first suit in the year 1995 is not acceptable. Except these litigation regarding the suit property the plaintiff also filed another suit against some other persons

which was also dismissed vide Ex.D6. Appeal filed by the plaintiff was also dismissed vide Ex.PX and the suit was also regarding the same suit property and that suit which was decided vide Ex.D6 was filed in the year 1996 and the plaintiff sought relief against Shankar Lal, Basati Ram, Het Ram and Ladu and there was prayer in that suit against the defendants be restrained from alienating the land in dispute and from raising any construction or interfering in the peaceful possession of the plaintiff over the land in dispute and the land was none else except the same and it was a dispute regarding Plot No. 574, 578 and 579. At the time of filing that suit and it was decided vide Ex.D6 and Ex.D7 that the plaintiff was not in the possession of the Plot No. 578 and 579 as per pleading raised in para No.2 of the present suit. So, the plaintiff filed two false suits which were decided against the plaintiff and he tried third time in the present suit, where he again failed to prove his possession in view of the above reasoning. So, the plaintiff is not entitled for any relief as claimed in Issue No.2. As the plaintiff has failed to prove his possession so he is not entitled for any damages also and plaintiff is not entitled for relief of permanent injunction as prayed for. Hence Issue No.2, 3 and 4 are decided against the plaintiff.

When the matter was considered by the First Appellate Court, it had agreed with the trial Court by giving its own reasoning, which is contained in paras No.15 and 16 of the judgment, which for ready reference is being reproduced as under:

15.Admittedly, the earlier suit for injunction filed by the appellant and proforma defendants against the respondents was dismissed by the trial court vide judgment Ex.D2 and by Ld. Appellate Court vide judgment Ex.D4. Learned Lower Court in order to determine whether the appellant/plaintiff had actually been in possession over the suit land rightly

reverted back to the above mentioned judgments Ex.D2 and Ex.D4 passed in the earlier suit instituted by the appellant. In the present case, there is sole statement of appellant/plaintiff qua his alleged dispossession from the suit land about 8/9 years ago and no other evidence has been adduced to prove that earlier thereto in pursuance to sale deed Ex.P1 he and performa defendants ever took or remained in possession over the suit land. The respondents on the other hand beside relying upon sale deed dated 3.7.79 Ex.D1 also placed on record the revenue record Ex.D10 to Ex.D14 and Ex.D17 to prove their valid title over the suit land and their possession over the suit land which had also been upheld by the court vide judgments Ex.D2 and Ex.D4, respectively.

16. Learned Lower Court rightly observed that going seven years back to the year 6.8.01 (when suit was filed) the year of dispossession of appellant comes to the year 1994 but as the earlier suit was filed on 24.6.95 in which judgment Ex.D2 was passed against the appellant and as no such plea of his dispossession by defendant No.1 and 2 had been taken by appellant/plaintiff the oral evidence adduced by appellant/plaintiff regarding dispossession can not be accepted. Moreover the document Ex.P4 relied upon by appellant/plaintiff which is the order dated 9.10.93 passed by Revenue Office changing revenue entries in favour of respondent / defendant No.1 and 2 further prove that before the institution of earlier suit in the year 1995 by appellant/plaintiff and proforma defendants the respondents were in possession over the suit land and had already raised a boundary wall thereon which fact also find mentioned in Ex.P4 and that the appellant also knew this fact the time of filing of earlier suit. Under the said circumstances the authority Veer Singh vs. Udham Singh (supra) relied upon by learned counsel for respondent where Hon'ble Punjab and

Haryana High Court observed that every party to litigation is obliged to bring true and correct facts and all necessary documentary evidence in its possession before the court and a party who omits to discharge its obligation can never get relief in equity is applicable to this case. In view of the above discussion, I am of the considered opinion that learned Lower Court rightly decided Issue No.2 to 4 against the appellant/plaintiff.

As the things stand, the plaintiff along with proforma defendants is owner of the land in suit, whereas the possession is found to be that of defendants No.1 and 2. Now the question, which arises is whether the claim of the plaintiff deserves to be accepted or rejected. Both the Courts below while coming to the conclusion that plaintiff along with proforma defendants are owners of the suit land had found defendants No.1 and 2 to be in possession thereof.

According to the Courts below, the case of the plaintiff that he had been dispossessed from the suit land about 8-9 years earlier was not established and there was nothing on record to show that either he or proforma defendants ever took or remained in possession of the suit land. On the other hand, defendants besides relying upon sale deed dated 3.7.1979 Ex.D1 had also placed on file revenue record Ex.D10 to Ex.D14 and Ex.D17 to prove their valid title over the suit land, which had been upheld by the Court vide judgments Ex.D2 and Ex.D4.

Even if it is taken that the plaintiff or proforma

defendants were not dispossessed as alleged by them, their title to the suit land is established and even recognized by the Courts below. If the plaintiff and proforma defendants are held to be owners of the suit land, then they have got every right to recover possession thereof from the persons, who are not shown to have a better title than the former. Article 65 of the Limitation Act, 1963 provides that for filing a suit for possession of immovable property or any interest therein based on title, the limitation provided is 12 years and it starts when the possession of the defendant become adverse to the plaintiff. In this case, the defendants have nowhere taken the plea of adverse possession, rather they have been claiming themselves to be owners of the land in suit, therefore, the suit cannot be held to be time barred by any stretch of imagination.

Learned counsel for the appellant has referred to authority **Indira Versus Arumugam, 1999(1) RCR(Civil)609** by the Apex Court wherein it was observed that when a suit for possession on the basis of title is filed then the plaintiff cannot be non-suited once title is established on the basis of relevant documents and other evidence unless the defendant proves adverse possession for prescriptive period.

Another judgment referred to was **C.Natrajan Versus Ashim Bai & Anr., 2007(4) RCR(Civil) 736** by the Apex Court wherein it was observed that if the plaintiff had filed the suit

claiming title over the suit property in terms of Articles 64 and 65 of the Limitation Act, 1963, the burden would be on the defendant to prove that he has acquired title by adverse possession.

Counsel for the appellant pressed into service another judgment by a Division Bench of this Court i.e. **Mohinder Singh (Died) through his LRs Versus Banta Singh and others, The Punjab Law Reporter (2012-3) 725** wherein it was observed that when there are two sale deeds, then the sale deed prior in time shall prevail and at the time of execution of second sale deed, the vendor would not have any right or title in the property, which can clothe the subsequent purchaser with any right or title as no one can transfer a better title than he possess.

Even if it is taken that defendants No.1 and 2 had been in possession of the suit land since long having raised construction therein, unless they prove either a better title than the plaintiff or take and establish plea of adverse possession, such defendants can certainly not retain possession of the suit land.

It needs to be mentioned here that the sale deed in favour of plaintiff and proforma defendants is dated 19.10.1964 executed by Bhagrawat son of Hunta and Ram Chand, Kishan Lal sons of Sahi Ram as well as Shankar son of Chunni Ram attorney of Aai Dan in favour of plaintiff Bije Singh, Balbir Singh and Sheo Singh. It is clearly mentioned therein that the possession had been delivered to

the vendees. The sale deed is a document of title whereas it is not so as regards the revenue record. The revenue record is essentially prepared for fiscal purposes i.e. to determine the liability of payment of land revenue and the same cannot be taken to be document evidencing ownership etc. of the persons whose names are entered in the ownership column. Though presumption of truth is attached to entries in the jamabandi under Section 44 of the Punjab Land Revenue Act but the said presumption is rebuttable. The sale deed put forward by the defendants, copy of Ex.D1 is dated 3.7.1979 executed by Smt.Chawli Devi widow of Bhagrawat as well as sons and daughter of Bhagrawat in favour of defendants No.1 to 3 i.e. Banwari, Ram Singh and Devi Lal. However, since it is established on record that Bhagrawat had already sold his share to plaintiff and proforma defendants, he was not left with any right or title in the suit land, as such, after his death his legal heirs could not have transferred that land to defendants No.1 and 2. Therefore, defendants No.1 and 2 did not acquire any title in the suit land. Though Bije Singh, Balbir Singh and Sheo Singh had filed a suit for permanent injunction against Banwari and Ram Singh, which was allowed by Civil Judge (Jr.Divn.), Hisar vide judgment dated 12.2.1999 and defendants were restrained to interfere in peaceful possession of plaintiff with regard to the khasra No.574 measuring one kanal, however, the claim of the plaintiff over khasra No.578(1-2) and 579(1-2) was rejected but then

the Civil Court fell in error in deciding question of title in the suit for injunction. In such type of suits, only the possession part is to be seen. The Court had however conceded the plaintiffs to be owners of the suit property on the basis of sale deed dated 22.10.1964. The present plaintiff and proforma defendants had brought a suit for declaration and permanent injunction against Shankar Lal, Basati Ram sons of Biru Ram and Het Ram son of Pat Ram with regard to the suit land. However, that suit challenging the sale deed dated 19.6.1976 and mutation No.1699 dated 15.9.1978 in favour of defendants No.1 and 2 was dismissed being time barred. But even then as discussed above, once the title with regard to the suit stood transfer in favour of the plaintiff and proforma defendants on the basis of sale deed by earlier owners, the legal representatives of one of the vendors could not have executed the sale deed in favour of defendants No.1 and 2 since they were not left with any title in the suit land.

Therefore, the judgments and decrees passed by the Courts below are not sustainable and those are based upon misappraisal of evidence and misinterpretation of law. The same are set aside. The appeal is accepted with costs throughout and suit filed by the plaintiff is decreed in favour of the plaintiff and proforma defendants and against the defendants No.1 and 2 inasmuch as a decree for possession by demolition of boundary wall and Kotha in

plots No.578(1-2) and 579(1-2) situated in village Chuli Bagrian, Tehsil Adampur, District Hisar is passed in favour of the plaintiff and against defendants No.1 and 2 and further by way of perpetual injunction, defendants No.1 and 2 are restrained from alienating or creating any charge over this property in any manner or from raising any further construction therein. However, under the circumstances, the relief for grant of mesne profits at the rate of Rs.500/- per month is declined.

6.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No