

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

RSA No.3442 of 2011 (O&M)

Date of decision : 18.03.2019

Sham Lal and others

...Appellants

Versus

Sh. Mahabir Mandir Chachanwala

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Jain, Advocate and
Mr. Deepak Jain, Advocate for the appellants.

Mr. Rajiv Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below decreeing the suit for possession filed by the plaintiff-respondent, a religious institution alleging encroachment over their property comprised in Khasra Nos.442, 444 and 445. No doubt, the plaintiff-a religious institution in para 1 had claimed ownership as a Philanthropist family of Sirsa had given this property for religious purpose and the defendants have encroached upon some part thereof.

Defendants contested the suit and pleaded that they have perfected their title by way of adverse possession. It was further pleaded that in fact the property was inspected by Kanungo, a revenue official and the property comprised in Khasra No.446 belongs to Provincial Government.

On pleadings of the parties, the trial Court framed following

issues:-

- “1. Whether the plaintiff is entitled for the possession of the suit land as mentioned in the heading of the plaint? OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether the plaintiff has no cause of action and locus-standi to file the present suit? OPD*
- 4. Whether the plaintiff has affixed proper court fee on the plaint? OPD*
- 5. Whether the present suit of the plaintiff is hopelessly time barred? OPD*
- 6. Relief.”*

Plaintiff, in order to prove prima facie, produced copy of jamabandi Ex.PW7/C which records in the ownership column certain individuals as owners and in the cultivation column, it is recorded in possession of the plaintiff-a religious institution. In column No.9, it has been recorded that the religious institution is in possession of the property for being used for religious purposes without payment of any amount. The municipal record was also produced to prove prima facie that the plaintiff has a superior right.

Both the Courts on appreciation of evidence, have decreed the suit after finding that the land in dispute belongs to the religious institution and the defendants have failed to prove that they have perfected their title by way of adverse possession.

Learned counsel appearing for the appellants has submitted that the plaintiff has failed to prove its ownership. He drew attention of the Court to copy of jamabandi for the year 1995-96, wherein the entry of

religious institution is in cultivation column whereas certain individuals are recorded as owners in the ownership column. Hence, he submitted that since plaintiff has failed to prove its title, therefore, the suit filed by the plaintiff could not be decreed. Learned counsel in support of his submission has relied upon the judgment passed by Hon'ble the Supreme Court in the case of **Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others, 2014 (2) RCR (Civil) 76.**

On the other hand, learned counsel appearing for the respondent-plaintiff has pointed out that there was no issue on ownership. He submitted that the defendants have failed to establish that he has any right to remain in possession. Hence, he submitted that the judgments of the Courts below require no interference.

This Court has examined the judgments passed by the Courts below and the record of the trial Court, as also analyzed the argument of the learned counsel for the parties.

There is no dispute with the fact that before the Courts below, no issue on title/ownership of the plaintiff was framed. The suit for entitlement to decree for possession was decided by examining who has superior rights amongst the parties. No doubt, the plaintiff in the very first sentence has pleaded and claimed ownership but in that very sentence, it has been pleaded that the property was owned by a Philanthropist family of Sirsa who had permitted the plaintiff-a religious institution to use it for religious purposes. The pleadings of the parties have to be read in entirety to come to a conclusion as to whether the suit filed by the plaintiff was based on title or not. In the considered view of this Court, the Courts below have

rightly did not frame the issue on title because the plaintiff was not claiming ownership rights. The Courts have adjudicated upon the competing rights of the plaintiff and the defendants-appellants to possession.

As regards reliance placed by learned counsel to the judgment of Hon'ble Supreme Court in case of Union of India and others (Supra), it may be noted that Hon'ble the Supreme Court was dealing with a case where the plaintiff had sought declaration of title. In those facts, the Court held that it is necessary for the plaintiff to prove his title.

As noticed above, the present suit filed by the plaintiff is based upon a superior right and entitlement to the possession of the property. Hence, there is no force in the submission of the learned counsel.

Still further, the entries in the jamabandi have presumption of truth and it was for the defendants to rebut that statutory presumption available to the records of right. Still further, defendants once pleaded that they have perfected their title, they indirectly admitted the rights of the plaintiff-society.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

18.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No