

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

RSA-3675-2011(O&M)

Date of decision:-8.2.2019

Dharam Singh

...Appellant

Versus

Shyam Lal and others

...Respondents

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

Present: Mr.S.K. Sharma, Advocate
for the appellant.

Mr.Sanjay Mittal, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Shyam Lal and Balbir Singh, both sons of Sh.Fakir Chand, residents of village Khori, Tehsil and District Rewari had brought a suit for permanent, mandatory and directory injunction against defendant – Dharam Singh of their village on the averments that plaintiff No.1 Shyam Lal is having residential plot marked as ABCD shown in red colour in the site plan attached, whereas plaintiff No.2 is owner of plot marked EFGHIJ shown blue colour in the said site plan situated

in *abadi deh* of village Khori, Tehsil and District Rewari; that both the brothers had come into possession of the respective plots on the basis of family settlement and by way of inheritance; that plaintiff No.1 Shyam Lal had obtained a loan of Rs.20,000/- from his department for the purpose of raising construction in his plot ABCD and had just filled up the foundations there, when defendant Dharam Singh filed a civil suit against both the plaintiffs and obtained an injunction order in his favour, however, such suit was ultimately dismissed on 23.11.1996; defendant Dharam Singh had preferred an appeal against the judgment and decree passed by the trial Court, which met the same fate on 9.12.1997. As per the version of the plaintiffs since they are in service posted at places away from the village inasmuch as plaintiff No.1 has been resident at Chandigarh and plaintiff No.2 at Pataudi, the defendant taking advantage of their absence come to the village in order to usurp the suit property, hired labourers and constructed boundary wall on the portion XYZ to which he had no right; that the defendant intended to raise further construction, however, on coming to know about the same the plaintiffs reached at the spot; the defendant refused to stop the construction and even assaulted the plaintiffs; that the matter was reported to the police. Feeling aggrieved by the acts of defendant, the plaintiffs brought the suit in question against him with a prayer that defendant be directed to remove the wall marked XYZ shown in red

colour of the property depicted in blue colour situated in the *abadi deh* of village Khorī and to restore it in its original position. As an alternative relief, the plaintiffs contended that if defendant succeeded to raise further construction, he be directed to remove the same and restrained from raising further construction in the plot in any manner. According to the plaintiffs, the defendant is working as Superintendent in Industries Department, whereas his sons are serving in police, as such they by taking undue advantage of their official positions want to grab the property of the plaintiffs.

Notice of the suit was given to defendant, who put in appearance and filed written statement contesting the suit raising preliminary objection challenging the maintainability of the suit and further contending that the plaintiffs had concealed the material facts from the Court and suit was time barred. On merits, the defendant denied that the plaintiffs are owners in possession of the suit property, rather he claimed that the property belongs to him and he is in possession thereof. According to the defendant, he had filed a suit bearing No.619 of 1989, which was with regard to other property and not of the suit property. According to the defendant, the plaintiffs are settled outside the village for more than 40 years and it is the defendant, who is in possession of the suit property; that he has constructed a boundary wall, chhappar and a tin-shed therein; that the construction is in existence since the time of consolidation of

holdings and the possession of defendant was from last more than 40 years, which is hostile, peaceful and continuous; that the plaintiffs have no right to interfere in his possession in any manner. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

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 on 13.9.2000:

1. Whether the plaintiffs are owners in possession of the suit property as mentioned in para 1 of the plaint by way of oral settlement as alleged? OPP.
2. Whether the plaintiffs are entitled for the relief of permanent injunction as well as mandatory injunction as prayed for? OPP.
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPD.
5. Whether the suit of the plaintiff is barred by time? OPD.
6. Whether the plaintiff has no cause of action to file the present suit? OPD.
7. Relief.

Both the parties led evidence in respect of their claims.

During the course of their evidence, the plaintiffs examined Kailash Chand, Record Keeper as PW1, Mahabir Singh, Draughtsman as PW2 and plaintiff No.1 got his statement recorded as PW3 whereas plaintiff No.2 stepped into the witness box as PW4 and they further examined Sh.Ramotar Yadav, Advocate as PW5.

On the other hand, the defendant had examined Sh.Rattan Lal, Retired Patwari as DW1 and Sh.Om Parkash Yadav, Draughtsman as DW3 and the defendant got his own statement recorded as DW2.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiffs, issue No.3 against the defendant, issue No.4 against the defendant, issue No.5 against the defendant and issue No.6 against the defendant. Resultantly, suit of the plaintiffs was decreed vide judgment and decree dated 8.8.2008. The plaintiffs were declared owners of the suit property and defendant was directed to deliver the possession thereof by removing the construction raised by him within a period of two months, failing which, the plaintiffs would be entitled to take assistance of the Court. However, the trial Court observing that the main relief was for possession of the suit property directed the plaintiffs to pay Court fee on the market value of the suit property prevailing at the time of the filing of the suit, within a period of one

month, failing which, the suit would be deemed to be dismissed.

Defendant was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Rewari, which was assigned to Additional District Judge, Rewari, who vide judgment and decree dated 28.2.2011 dismissed the appeal.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, defendant had filed the present regular second appeal before this Court, notice of which was issued to the respondents, who appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The first and foremost argument advanced by learned counsel for the appellant/defendant was that suit for permanent injunction at the instance of plaintiffs was not maintainable when they were not in possession of the suit property and that the trial Court had wrongly decreed the suit of the plaintiffs; that the First Appellate Court fell in error in affirming the judgment and decree passed by the trial Court and dismissing the appeal filed by defendant/appellant. That wrong done be undone by accepting this appeal and suit of the plaintiffs be dismissed.

Whereas learned counsel for the plaintiffs/respondents has contended that the plaintiffs had filed suit for mandatory and

directory injunctions in addition to seeking permanent injunction and the Courts below have recorded findings that Court is competent enough to mold the relief in the facts and circumstances of the case, therefore, the suit is maintainable.

After hearing the rival contentions of learned counsel for the parties, I find that in para No.20 of the judgment, the trial Court has recorded a specific finding that from the site-plan filed in this case as Ex.PW2/A and with the comparison of the site plan placed in the previous suit, the Court is of the view that the suit property and the property involved in the previous suit were one and the same. The defendant had lost the first round of litigation in the trial Court as well as in the First Appellate Court. Therefore, he cannot wriggle out of those findings and take those very pleas in this suit. The defendant is not claiming any title to the suit property, rather contending that he has been in possession thereof for the last more than 40 years becoming owner by way of adverse possession. In para No.21 of the judgment, the trial Court has rightly observed that if plea of defendant is to be admitted then defendant impliedly admitted the title of the plaintiffs over the suit property and even the title of the plaintiffs over the suit property stood proved from the pleadings of the defendant. In para No.22 of the judgment, the trial Court has observed that it has come on record that both the plaintiffs had been working in Government Departments residing at Chandigarh and

Pataudi and that plaintiff No.1 had taken loan in the year 1989 and mortgaged his property for Rs.50,000/- and when the loan was disbursed in his favour, a certificate Ex.PW4/B was issued by the revenue official showing that the entire land measuring 30 marlas came to the share of family of the plaintiffs and their brother Johri Lal, which was partitioned by them in an oral family settlement and plaintiffs would become owner of the suit property. The documents in that regard have been referred to as Ex.PW4/B and Ex.PW4/C. It has further been noticed that when the plaintiffs had started construction then defendant had filed a suit for permanent injunction, which was dismissed by the trial Court vide judgment Ex.PC. The appeal was dismissed by First Appellate Court vide judgment Ex.PA. Thus, ownership of the plaintiffs over the suit property stood proved. In the earlier litigation, the trial Court as well as the Appellate Court had found that defendant was neither owner nor in possession of the suit property. Therefore, the defendant cannot take up the same plea again in the present suit. Furthermore, though the defendant had taken up a plea that he had constructed a tin-shed and chhappar in the suit property but the same was not reflected in the site plan filed by him in the Court on 18.2.1989 thereby showing that the chhappar and tin-shed had been constructed subsequently before filing of the present suit in absence of the plaintiffs residing outside the village. Similarly, the wall in question constructed by defendant was not in

existence at the time of filing of earlier suit by defendant since it is not shown in the site plan filed by him in that suit. The Courts below on appreciation of facts and appraisal of evidence have returned the finding that the defendant had taken forcible possession of the suit property before filing of the suit raised construction without any right title or interest. Therefore, he was liable to remove the same and deliver the possession in favour of the plaintiffs, who are owners of the suit property. I do not see any reason to disagree with the concurrent findings recorded by the Courts below in that regard.

Though learned counsel for the appellant tried to build up an argument that the property, which was subject matter of the earlier litigation was different from the suit property in the present case but he could not convince me in that regard. Both the Courts below have come to the conclusion that the property in two suits was the same.

Learned counsel for the appellant has referred to authority **Lakmi and others Versus Karam Singh, 2010(1) Latest Judicial Reports 567** by a Coordinate Bench of this Court, wherein it was observed that when in a suit for permanent injunction, there are no allegations that during the pendency of the suit, the plaintiff has been dispossessed, the suit cannot be change into one for possession. However, this authority is not applicable to the present case since here the plaintiffs had filed a suit for mandatory injunction and directory injunction in addition to seeking permanent injunction and

the Courts below have returned a finding that plaintiffs were owner of the suit property and defendant had raised construction of the wall therein without any right or interest just before filing of the suit by the plaintiffs. Therefore, the plaintiffs were entitled to get possession of the land by demolition of the wall. No fault can be found with the relief so granted by the Courts below.

Another authority referred to by learned counsel for the appellant was **Ramji Rai & Anr. Versus Jadgish Mallah (Dead) through LRs & Anr., 2007(4) Civil Court Cases 107** by the Hon'ble Apex Court wherein it was observed that when in a suit for permanent injunction restraining defendant from interfering in possession, the plaintiff was not in possession, the suit was to be dismissed only for the said reason and further finding that plaintiff is not owner is not necessary. For the similar reasons as discussed above, this authority does not come to rescue of the appellant in any manner.

Learned counsel for the respondents had referred to citation **Kanakadhara Constructions Versus Smt.K.Jhansi Lakshmi Bai, 2006(1) RCR(Civil) 604** by Andhra Pradesh High Court, wherein it was observed that when a person is dispossessed from the property otherwise than in due course of law, he is entitled to recover possession under Section 6 of Specific Relief Act and he is not required to prove his title to property and further defendant cannot

take the plea of title and that scope of enquiry under Section 76 is limited to the question of possession within six months immediately preceding date of filing of the suit, in that way question of title has no place for consideration.

No substantial questions of law is involved.

Thus I do not find any illegality or infirmity in the judgments passed by the Courts below. Rather the same are based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Finding no merit in the appeal, the same stands dismissed.

8.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No