

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

RSA-1032-2013(O&M)

Date of decision:-26.7.2019

Mohan Singh and another

...Appellant

Versus

Mohinder Kaur and others

...Respondents

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

Argued by: Mr.Ashok Kumar Verma, Advocate
for the appellants.

Mr.B.S. Mittal, Advocate
for respondents No.2 and 3.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Mohinder Kaur – widow, S/Sh.Bootia Singh, Sarup Singh, Gurdev Singh – sons of Sh.Jeevan Singh, residents of village Dharampura, Teshil Rania, District Sirsa and Smt.Inderjit Kaur wife of Sh.Gian Singh and daughter of Sh.Jeevan Singh had brought a suit for possession against the defendants i.e. Anokh Singh (since dead) represented through his legal representatives as well as Mohan Singh

and Gajjan Singh on the averments that earlier the house in dispute fully described in the head-note of the plaint was owned by Sh.Jeewan Singh, predecessor-in-interest of plaintiffs, who had died on 5.1.2004; thereafter the property was mutated in the names of the plaintiffs on 9.6.2006; that during his life time Sh.Jeewan Singh had filed a suit for permanent injunction bearing No.354 of 2000 against defendants No.1 and 2 wherein Mohan Singh defendant was proceeded against ex-parte, whereas Anokh Singh had contested the suit and denied the ownership of Jeewan Singh in his written statement claiming that he was owner by way of adverse possession; that suit was decreed on 17.3.2005, however Anokh Singh – defendant No.1 in the present case in utter violation of the decision of the Court transferred the physical possession of the land in dispute to defendant No.2 – Mohan Singh, who is now in possession of the suit property having occupied it without permission of the plaintiffs, without any right to do so. The plaintiffs prayed that a decree for possession of the house/property be passed in their favour against the defendants and in addition to that consequential relief of permanent injunction restraining the defendants from demolition of old structure of the house, constructing new building, putting any earth etc. or creating any encumbrance on the house was also sought.

On getting notice, LR's No.(iii) and (iv) of defendant No.1 appeared and filed a joint written statement and raised various

preliminary objections with regard to maintainability of the suit; non-arising of cause of action to the plaintiffs against defendants; plaintiffs being estopped by their act and conduct from filing the suit; concealment of facts etc. On merits, the answering defendants denied that house in question which is constructed upon the area in dispute was owned by Jeewan Singh, rather it was contended that earlier the suit property was owned and possessed by ancestors of the plaintiffs and now this property is owned and possessed by defendants No.2 and 3 with which the plaintiffs have no concern and if there is any mutation in respect of the suit property, the same is wrong, illegal, null and void and defendants No.2 and 3 are not bound by this mutation or any other record as they were not party to the earlier suit; that in the earlier suit plaintiffs had impleaded one Mohan Singh son of Inder Singh, although defendant No.2 is the son of Vijender Singh and in the head-note of the plaint, it has been wrongly mentioned as Inder Singh alias Vijender Singh, although his name is only Vijender Singh but the plaintiffs intentionally did so to prove that in the earlier suit, defendant No.2 Mohan Singh was party; that defendants No.2 and 3 are in possession of the suit property for the last 50 years. Such defendants denied that Anokh Singh had transferred the physical possession of the suit property to defendants No.2 and 3. Refuting the remaining allegations, such defendants prayed for dismissal of the suit.

Defendants No.2 and 3 filed a separate written statement almost on the similar lines as had been done by LRs No.(iii) and (iv) of defendant No.1

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

1. Whether the plaintiff is owner in possession of the house comprised in Khasra No.136 equal to 1 Kanal 0 marla of village Harni Khurd, Tehsil Rania, District Sirsa, as alleged? OPP.
2. Whether the plaintiff is entitled to the consequential relief of permanent injunction as prayed for? OPP.
3. Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD.
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
5. Relief.

It is relevant to mention that vide order dated 4.11.2011, on an application moved by the plaintiffs, issue No.1 was modified and re-framed as under:

1. Whether plaintiff is entitled for possession of the suit property, as prayed for? OPP.

In order to prove their case, the plaintiffs had examined

Sh.Surjit Singh as PW1, Sh.Saroop Singh as PW2, Sh.Nand Lal as PW3, Sh.Dinesh Kumar, DRK as PW4 besides tendering certain documents.

On the other hand, defendants had examined Sh.Sampuran Singh, Sarpanch as DW1, Sh.Gurmail Singh, Lamberdar as DW2 and Sh.Mohan Singh as DW3 besides tendering certain documents.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiffs and against the defendants, issues No.3 and 4 against the defendants. Resultantly, the trial Court vide judgment and decree dated 23.1.2012 decreed the suit with costs and a decree for possession to the effect that plaintiffs are owners in possession of the house comprised in Khasra No.136(1-0), fully detailed and described in the head-note of the plaint was passed in favour of the plaintiffs and against the defendants. Furthermore, a decree for permanent injunction was also passed in favour of the plaintiffs and against the defendants restraining the defendants from demolition of old structure of the house, constructing new building, putting earth etc. or creating any encumbrance on the house; in addition to that the defendants were directed to hand over the possession of the suit property to the plaintiffs within the period of two months.

Feeling aggrieved by the said judgment and decree, the

defendants No.2 and 3 had filed an appeal before District Judge, Sirsa, who vide judgment and decree dated 11.10.2012 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court further directing that in case the defendants did not hand over the possession of the suit property to the plaintiffs within two months from the date of judgment in appeal of the said Court then the plaintiffs would be entitled to recover mesne profits at the rate of 500/- per month from the date of filing of the suit till actual delivery of possession.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendants No.2 and 3 have filed the present regular second appeal before this Court, notice of which was issued and respondents No.2 and 3 appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the appeal.

Both the Courts below considering the pleadings of the parties and evidence brought on record by them, in view of the legal and factual position had held the plaintiffs to be owners of the suit property. The trial Court referring to jamabandi for the year 1983-84 Ex.P4 has observed that Jeewan Singh son of Arjan Singh, predecessor-in-interest of plaintiffs has been recorded as owner in possession of Khasra No.136(1-0) gair mumkin abadi and similar entries are there in the jamabandis for the years 1993-94 Ex.P5,

2003-04 Ex.P6 and 2007-08 Ex.P7 and further from the judgment and decree dated 17.3.2005 Ex.P2 and Ex.P3, this fact is corroborated. In that suit issue No.1 had been framed to the effect that plaintiff (Jeewan Singh) is exclusive owner of the house comprised in the suit land. Description of house in earlier Civil Suit No.354-C of 2000 and in the present suit is same. Jeewan Singh was held to be owner of the suit property in that litigation and possession of defendant Anokh Singh was held to be that of licensee. Then there was admission by defendant Mohan Singh appearing as DW3 in his cross-examination with regard to ancestors of plaintiffs being owners in possession of the suit property and there was no evidence to show that defendant had purchased the suit property from predecessor-in-interest of plaintiffs. With regard to entitlement of the plaintiffs to get possession, the trial Court had referred to Article 65 of the Indian Limitation Act, which provides that a suit for possession of immovable property is 12 years from the date when the possession of the defendant becomes adverse to the plaintiff.

The trial Court had referred to various judgments in that regard and ultimately after detailed discussion had come to the conclusion that defendants had failed to prove their possession adverse to that of plaintiffs as pleaded by them in the written statement; that judgment and decree dated 17.3.2005 had become final and binding upon the parties since those had not been

challenged by defendants No.1 and 2; that in earlier litigation possession of defendant No.1 was held to be as a licensee that is permissive.

Learned District Judge, Sirsa was in complete agreement with the trial Court in that regard.

Learned counsel for the appellant has contended that the trial Court was not justified in directing the defendants to hand over the possession of the suit property to the plaintiffs within two months of the passing of the decree and rather it acted like an Executing Court. However, learned counsel for the respondents/plaintiffs contended that the trial Court was justified in passing such a direction and no fault can be found with the same.

After hearing learned counsel for the parties, I find that the trial Court did not over step its jurisdiction in passing such type of direction and it can certainly be not taken to be illegal. The defendants did not hand over the possession to the plaintiffs within such period, for that reason the Appellate Court had observed that in case the defendants did not hand over the possession of the suit property to the plaintiffs within two months from the date of judgment in appeal of the said Court then the plaintiffs would be entitled to recover mesne profits at the rate of Rs.500/- per month from the date of filing of the suit till actual delivery of possession. Of course the Appellate Court was justified in doing so.

The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

No substantial question of law arises in this appeal.

It being so and in view of the concurrent findings returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed accordingly.

26.7.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No