

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

R.S.A. No. 274 of 2015

Date of decision:- 04.12.2019

Narinder Singh through LR Parminder Singh

...Appellant

Versus

Nand Lal through LR Suresh Kumar and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.K. Chhibbar, Sr. Advocate with
Ms. Ateevraj Sandhu, Advocate
for the appellant.

Mr. Baldev Raj Mahajan, Sr. Advocate with
Ms. Surabhi Kaushik, Advocate
for the respondents.

RITU BAHRI J.

The present appeal is directed against concurrent finding of facts recorded by both the Courts below whereby suit filed by plaintiffs/respondents for possession, has been decreed.

Brief facts of the case are as alleged by the plaintiffs/respondents that they have filed suit for possession of 375 sq. yards of land denoted by Khasra No.496 min and 497 min in the revenue estate of Sultanwind, sub urban as shown in red colour in the site plan. Hardit Mal predecessors of the plaintiffs owned huge lands in the estate of Sultanwind sub urban, Amritsar which included Khasra Nos.496,497 and 502. He died in the year 1965 and was survived by his sons Diwan Chand, Nand Lal, Inderjit, Roshan Lal, Lakhpatt Rai and a daughter Smt.Bimla Devi in whose favour, his estate was inherited. Diwan Chand died in the year

1982 and his share in the estate devolved upon his legal heirs. Said Rattan Kumar died in the year 1993 and is survived by his sole heir Prem Rani widow of Rattan Kumar in terms of will. Out of the said land, a plot measuring 100 X 100 feet was sold by Roshan Lal plaintiff No.3 which is denoted as plot Nos.1 and 2 and form part of Khasra No.502 in favour of Labha Mal vide sale deed dated 27.5.1969. Said plot was further sold by Labha Mal in favour of Kalyan Singh vide registered sale deed dated 15.10.1973. Kalyan Singh further sold away the said plot in favour of Narinder Singh vide sale deed dated 29.8.1978. Khasra Nos.496 and 497 were mortgaged in favour of Nirankari Financiers and Chit Fund Pvt. Ltd. belonging to Kalyan Singh vide registered mortgage deed. The said mortgage was with possession. It was redeemed in the course of a suit for recovery of amount on the basis thereof having been filed by Nirankari Financiers and Chit Fund company against Nand Lal bearing suit No.132 of 1985 decided on 21.1.1989 by Sh.A.S.Kathuria, Sub Judge Ist Class, Amritsar. Khasra Nos.496 and 497 adjoin Khasra No.502 on the eastern side. Defendant has encroached upon said Khasra Nos.496,497 and encroached the area measuring 375 sq. yards on which he has set up two small rooms, a store and an open shed bounded by boundary wall. Khasra No.496 having total area of 8 Kanals 11 Marlas out of which 20/57 share belongs to plaintiff No.11. The encroachment has been made by defendant a couple of years ago while the plaintiffs were scared away from the village Sultanwind and had to set up their shelter in the City of Amritsar and in their absence around the year 1989, after property being released by Nirankari Financiers, the defendant encroached upon the same. The plaintiffs have requested the defendant to remove the encroachment and

to put back the plaintiffs in possession of the suit property but they have failed to do so. Hence the present suit.

Notice of the suit was sent to the defendant who appeared and filed written statement, in which he took the various preliminary objections such as : the plaintiffs have no locus standi to file the present suit; the suit is not within limitation etc. On merits, it is alleged that plaintiffs have no right, title or interest in the suit property as defendant has purchased the property from Kalyan Singh vide registered sale deed dated 29.8.1978 and the disputed property is part of property purchased by defendant and covered by the said sale deed. The plaintiffs were never in possession of the disputed property and they were not in possession of suit property since 27.5.1969. It is alleged that the defendant is owner of disputed property by virtue of sale deed and in the alternative, the defendant has become owner of the disputed property by way of adverse possession. His possession is open, hostile, continuous, uninterrupted for the last more than 12 years and he is occupying the same as owner to the knowledge of the plaintiffs and to the knowledge of public at large. So he has become owner of the disputed property by way of adverse possession as plaintiffs are estopped by their own act and conduct from filing the present suit. This fact is denied that they have made any encroachment upon Khasra Nos.496 & 497 min as alleged in the plaint and they are in illegal possession of land measuring 375 sq. yards and prayed for dismissal of the suit.

Plaintiffs filed replication, controverted the averments as made by the defendant in the written statement and reiterated that of the plaint.

On the pleadings of the parties, the learned Lower Court settled the

following issues:-

- 1. Whether plaintiffs are entitled to possession of suit land bearing Khasra Nos.496 and 497 min?OPP.*
- 2. Whether defendant has encroached upon the suit land illegally?OPP*
- 3. Whether the defendant is owner in possession of the property in dispute as per sale deed dated 29.8.1978 registered on 19.9.1978?OPD.*
- 4. Whether the suit is within limitation?OPP.*
- 4-A Whether the defendant has become owner of the disputed property by way of adverse possession as alleged in preliminary objection No.6 of written statement?OPD*
- 5. Whether plaintiff is estopped by his own act and conduct from filing the suit?OPD.*
- 6. Relief.”*

Both the Courts decreed the suit of the plaintiffs/respondents as the plaintiffs have proved on record that they are owners of Khasra No. 496 and 497. Further they have proved that there is encroachment in Khasra No. 496 and 497, as ExP2 shows that demarcation was made at the spot and as per Ex P2, the concerned Patwari went to the spot and was directed by the Tehsildar to carry out the demarcation of Khasra No. 496 and 497 and this report also reveals that those persons, whose land adjoin with these khasra Nos were called. Nishan dehi was made after fixing burjies and parties were satisfied about the same and no dispute arose at that time. Thus, the encroachment was made by defendant/appellant in the year 1989 and thereafter, the plaintiff/respondents requested the defendant to remove the encroachment time and again. Further it is nowhere mentioned in the sale deed that any part of Khasra No. 496 and 497 was sold to him. Initially the property was sold by one of the plaintiffs to Labha Mal, who sold further to Kalyan Singh and Kalyan Singh sold to the defendant. In all the sale deeds

(Ex P-3 to P-5) there is only mention of Khasra No. 502. Reference has further been made to the property which was lying mortgaged with Kalyan Singh i.e Khasra No. 496 and 497, that was redeemed. A suit for recovery of the amount due on the basis thereof has been filed by Nirankari Financiers and Chit Fund Company against the plaintiffs. The plaintiffs have placed on record copy of P.W.5/1 and that suit was compromised with Sarabjit Singh, who at that time was successor and director of the company vide statement Ex P-2 recorded in that suit. The possession of the property was then delivered back to the mortgagor after receipt of money i.e on 23.01.1989.

Learned senior counsel for the appellant has argued that in site plan (Ex D.W.7/A) there is no mention of khasra No. 496 and 497 and thus, the suit of the plaintiffs has wrongly been decreed by referring to the site plan where some portion of Khasra No. 502 has been reflected to show Khasra No. 496 and 4967.

Reference at this stage can be made to copies of jamabandi Ex P-16 and P-17 which establish that originally Hardit Mal was the owner of Khasra No. 496 and 497 and Khasra No. 502. Plaintiff No. 3 being the son of Hardit had sold a plot comprised in Khasra No. 502 to Labha Mal vide sale deed dated 27.05.1969. The plot sold to Labha Mal was 100 ft X 100 ft area. The same plot was sold by Labha Mal to Kalyan Singh through sale deed dated 15.10.1973. Kalyan Singh sold the plot comprising in Khasra No. 502 measuring 100 ft X 100 ft to Narinder Singh (defendant). The execution of the sale deeds have been duly proved by the plaintiffs. Hence for all intents and purposes, the defendant has purchased the plot comprising in Khasra No. 502 measuring 100 ft X 100 ft.

In this backdrop, the finding of facts recorded by Lower

Appellate Court does not require any interference by this Court, as it does not suffer from any infirmity or illegality.

No substantial question o of law arises for adjudication by this Court.

The appeal stands dismissed.

C.M. No. 15704-C-2015

The present application under Section 151 CPC on behalf of the respondents is for issuance of direction to the appellants to deposit/pay the mesne profits for use and occupation of property in dispute being 375 sq yards of land forming part of Khasra No. 496 min and 497 min situated at Sultanwind Urban Tehsil and District Amritsar @ Rs.1,20,000/- per month from the date of passing of decree for possession, vide judgment and decree dated 09.06.2009.

In para No. 5 of the application, it has been stated by the respondents that the property ad-measuring 1024 sq feet adjoining to the suit property bearing Khasra No. 496 at Sultanwind Urban Tehsil and District Amritsar has recently been leased by Suresh Ram Pal and Mahesh Ram Pal-respondents to Reliance Jio Infocomm Ltd through registered lease deed dated 10.04.2013 (RA-1)at monthly rent of Rs.34,000/- per month in addition to service tax, if application with increase in rent @ 12% after every 3 years.

Since the appeal filed by the appellants is now being dismissed, the respondents/plaintiffs have a right to be granted mesne profit from 09.06.2009. However, the plaintiffs can at best be granted mesne profit @Rs.15000/- month and reference at this stage can be made to judgment of

Hon'ble the Supreme Court of India in a case of ***Narayanarao (dead)***

through LRs and ors, 1995 (Sup4) SCC463 wherein Hon'ble the Supreme Court was examining a case whereby High Court had dismissed the RSA but granted mesne profit to the plaintiffs under Order 41 Rule 33 CPC and against this order, an appeal was filed, which was dismissed by Hon'ble the Supreme Court.

In view of the above factual position, the present application is allowed and the appellant is directed to deposit the mesne profit @ Rs.15000/- per month w.e.f 09.06.2009 till the decision of the appeal along with 8% interest.

04.12.2019

G Arora

(***RITU BAHRI***)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No