

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2957 of 2013(O&M)

Date of Decision:23.05.2019

Kirpal Singh & Anr.

.....APPELLANTS

Vs.

Sarup Singh

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Bhag Singh, Advocate for the
applicant-appellants.

Mr.G.S.Dhindsa, Advocate for the respondent.

DR. RAVI RANJAN, J.(Oral Judgment)

CM-18580-C-2018

After some argument, learned counsel for the applicant-appellant seeks leave to withdraw this application.

Accordingly, this application is dismissed as withdrawn.

RSA No.2957 of 2013

This appeal has been preferred assailing the Judgment and Decree dated 11.04.2013 passed in C.A. No.64 of 11.10.2012 by Ld. Addl. District Judge, Patiala, by virtue of which he has dismissed the appeal filed by the appellant and affirmed the Judgment and Decree dated 15.09.2012 passed in Suit No. 669T/13.08.2007 by the Civil Judge (Jr. Division), Patiala.

The plaintiff-respondent, namely, Sarup Singh filed a suit seeking permanent injunction restraining the defendants and their agents etc. from interfering or causing interference or dispossessing the plaintiff from the plot shown as ABCDEF in red color in site plan attached with the plaint and which is situated within the Lal Lakeer at village Hadana, Tehsil and District Patiala. It is admitted by both the sides that the suit property is situated within the Lal Lakeer

and, therefore, no document of title was required to be produced and a suit was required to be decided only on the basis of the possession of the parties.

Case of the plaintiff is that since his forefathers, who were resident of village Hadana, were in possession of the suit property since last 55-60 years and after his forefathers, now the plaintiff was in possession. A temporary shed was constructed by them to keep cattle and cow dung etc. The defendants, i.e., Kirpal Singh, who is the nephew of plaintiff-Sarup Singh and others were threatening to dispossess the plaintiff from the plot in question and several attempts were being made to that effect but the attempts were prevented by the respectable persons of the society. Hence, the suit was filed.

In response to the summons issued in the suit, the defendant appeared and contested the claim of the plaintiff by filing written statement taking a ground that the plaintiff has suppressed the material facts and he has no cause of action to file the suit. The possession of the plaintiff was denied and it is pleaded that plaintiff or his forefathers has no concern with the suit land as none of them came in possession at any point of time. However, it is admitted in the written statement that suit property was within Lal Lakeer of the village but a stand was taken that the defendant was in possession of the same and the construction therein was raised by the defendants' side.

On consideration of rival contentions of the parties, the Ld. Trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
2. Whether the plaintiff has got no cause of action to file the present suit? OPD
3. Whether the plaintiffs have not come to the Court with clean hands and are guilty of concealing and suppressing material facts. If so its effect? OPD

4. Whether the suit is false, frivolous and vexatious to the knowledge of the plaintiff. If so, its effect? OPD.

5. Relief.

In order to prove his case, the plaintiff examined Chanan Singh, Draftsman, who has prepared the site plan of the suit property in question at the instance of the plaintiff, as PW1. The neighbour on the west side of the suit property, v.i.z., Baldev Singh has been examined as PW-2. Karam Singh, son of the plaintiff, has been examined as PW-3. He has tendered certain documents which have been brought on record such as discharge slip Ex.P2, photographs Ex.P3 to P6, negative of the photographs Ex.P7 to P10. Kuldeep Singh, the Photographer deposed as PW4 and has proved the photographs Ex.P3 to P6 and its negative Ex. P7 to P10.

The aforesaid witnesses were cross-examined by the defendants.

Defendant Kirpal Singh has examined himself as DW1 and one Karnail Singh, Nambardar has been examined as DW2. Shamsheer Singh has been examined as DW3.

The aforesaid witnesses were cross-examined by the plaintiff.

The Trial Court, on consideration of materials available on record, has decided issue No.1 in favour of the plaintiff holding that he is entitled for a decree of permanent injunction against the defendants. So far as other issues are concerned, in view of fact that issue No.1 was decided in favour of the plaintiff, other issues were also, as a sequel thereof, were decided against the defendants.

The Trial Court has taken into consideration the site plan and a photograph of the suit property one of which was admitted by DW1-Kirpal Singh, i.e., the defendant himself and came to the conclusion that the plaintiff is in possession. It has also considered the fact that the neighbour Baldev Singh has also examined himself as PW2 and has stated that plaintiff is in possession

of the suit property since the time of his forefathers about 50-60 years. This has also been noticed that no site plan can be proved on behalf of the defendant and the site plan proved by the plaintiff has been admitted by the defendants and no cogent evidence could be led on behalf of the defendant save and except the evidence of Kirpal Singh to show that they are in possession of the suit property.

The Judgment and decree was assailed by filing an appeal which was heard, considered and dismissed by the Addl. District Judge, Patiala.

The First Appellate Court has taken into notice the aforesaid pieces of evidence produced on behalf of the plaintiff and the photographs and its negatives which have been proved by PW4 Kuldeep Singh (the photographer) showing the plaintiff to be in possession. The First Appellate Court has also noticed that during his cross-examination DW1-Kirpal Singh has admitted the photograph Ex.P3 pertaining to the suit property and he has also admitted the fact that PW2 Baldev Singh is residing in the vicinity of the land in dispute. It has also noticed that DW1 has admitted the fact that the plaintiff has filed a criminal complaint against the defendant when he tried to dispossess the plaintiff from the suit property. Eventually, the First Appellate Court has opined that indirectly the defendant has admitted the possession of the plaintiff over the suit property.

The Courts below have also noticed that though DW3-Shamsher Singh claims to be uncle of both the parties but had failed to identify the plaintiff and his son in photographs Exs.P3 and P4. Moreover, DW3 has also admitted that he has rivalry with the plaintiff and his family members for the last 40 years. Thus, his credibility which can be attached to his testimony has been questioned. Both the Courts have recorded a concurrent finding that the

witnesses examined by the plaintiff have withstood the test of cross-examination as nothing contradictory could crop up in their version so as to create any doubt.

It has also been held that since the property is within the Lal Lakeer, no document of ownership could be produced either on behalf of the plaintiff or on behalf of the defendant. Moreover, plaintiff's possession has been proved, with respect to suit property. The First Appellate Court has held that the findings recorded and decree of permanent injunction passed by the Trial Court does not warrant any interference.

In the aforesaid background of the matter, I have heard learned counsel for the appellant and have perused the records of this case.

Learned counsel for the appellant has vehemently argued that no credibility should be attached to the testimony of PW-2 Baldev Singh, whose evidence has been shown to be a clinching factor in favour of the plaintiff, for the reason that he appears to be an interested witness as a police case was filed by the defendant Kirpal Singh against said Baldev Singh and the plaintiff for taking away the guarders put on the boundary wall by him but later on, the matter was compromised as Rs.5,000/- paid by them.

I have gone through the cross-examination of PW2. Of course in cross-examination, a question was put to him and admitted by him that Kirpal Singh moved an application in the police station against Baldev Singh(PW2), Sarup Singh(plaintiff-respondent), Karam Singh (son of the plaintiff) and Hansraj Singh for taking away the guarders put on the wall. However, it is also clear from such a cross-examination that the matter was later on compromised as Rs.5,000/- having been given by the concerned persons. The photocopy of the compromise has marked for identification as Mark-A, but at the same time, PW2 has stated that he cannot say whether it bears his signature or not.

However, taking that to be true, once the matter is compromised, a stand cannot be taken that the litigation and ill-will continued till such other evidence or material is brought on record to substantiate the same.

In such a situation, in my considered view, the testimony of PW2 cannot be discarded in its entirety as he is admittedly in the boundary of the plot in dispute and he is the best person to say about the possession of the parties. He has stated that Kirpal Singh's house is 250-300 feet away which is the stand of the plaintiff also. The plaintiff has proved the site plan also and photograph also. The photographer has also proved the photographs and the negatives which shows plaintiff's side along with cattle upon the plot in dispute. One of the photographs, Ex.P3, has been admitted by the defendant also. While deciding a civil suit, the concerned Court has to weight the evidence led by both the contesting parties and one whose evidence carries more weight, law has to tilt in favour of that side. The matter has to be seen on the basis of preponderance of the probability. In such a situation, when no cogent evidence could be led on behalf of the defendant and certain evidence was of course is there in favour of the plaintiff regarding possession, coupled with the fact that admittedly, the suit property being within the Lal Lakeer, none of the parties could have produced any document of title, in my view also, the Courts below were left with no option than to uphold the possession of the plaintiff and pass a decree of permanent injunction restraining the defendants from interfering into the peaceful possession of the property.

In my considered view, learned counsel for the appellant has not be able to raise any substantial question of law or any cogent ground warranting interference of this Court in the concurrent findings recorded by both the Courts below.

In the result, this appeal fails and is, accordingly, dismissed.

(DR. RAVI RANJAN)
JUDGE

23.05.2019
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No