

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 3755 of 2015 (O&M)

Date of Decision: 25.03.2019

Sukhdev Singh and another

.....Appellants

Vs.

Ram Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. S.S. Salar, Advocate, for the appellants.

Mr. Mandeep Singh Dhaliwal, Advocate, for the respondents.

AMOL RATTAN SINGH, J. (ORAL)

1. By this appeal, the plaintiffs challenge the judgment of the learned first appellate Court, by which the judgment and decree issued by the learned trial Court has been reversed.

The suit of the appellant-plaintiffs was one seeking possession of the suit land which is contended to be comprised in 'Killa' no. 350/4 of 'Khewat' no. 518 in village Changal, Tehsil and District Sangrur, the suit property being 01 'Biswa'.

2. Notice having been issued in the suit, in the written statement filed by the respondents-defendants, they contended that the property was owned by them, with the plaintiffs simply wanting to encroach upon their land.

It was further contended that no demarcation had been conducted on the suit property.

3. On the aforesaid pleadings, the following issues were framed by the learned trial Court:-

“1. Whether the plaintiff is entitled for possession of the suit property as prayed for? 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 to file the instant suit? OPD*

4. *Whether the suit is bad for non-joinder of necessary parties? OPD*

5. *Relief.”*

By way of evidence, appellant-plaintiff no. 1 Sukhdev Singh testified as PW-1 and other than his affidavit, also proved a '*Jamabandi*' (record of rights) for the year 2009-10 as Ex. P-1, with the respondent-defendant no. 1, Ram Singh, having testified as DW-1, also having examined one Surjit Singh as DW-2, both of them having tendered their respective affidavits in evidence.

4. The learned trial Court found that as per the aforesaid '*Jamabandi*', Ex. P-1, the plaintiffs were shown to be owners in possession of the suit property, and therefore, the plaintiffs had proved the best documentary evidence available as regards their ownership, whereas the defendants (respondents herein) had failed to produce any such documentary evidence, they wholly having relied on the oral testimonies of DWs 1 and 2.

On the aforesaid findings, the suit of the appellants was decreed in their favour by that Court, vide a judgment and decree issued on 10.12.2013.

5. The respondent-defendants having appealed against the same, the learned first appellate Court recorded that as per the plaintiffs, the suit property was actually a manure pit, with the defendants allegedly having encroached upon it in the month of January 2011, the defendants in fact contending that they are also owners of the manure pit and would get the demarcation done and thereafter would vacate it if they were not found to be in possession of their own property.

It was further recorded that even as per the '*Jamabandi*' Ex. P-1, relied upon by the plaintiffs, they were shown to be co-sharers in possession over 1

'Biswa' of land and that in cross-examination the first plaintiff had admitted that he had not moved any application to the police, as to when the *gober* gas plant was installed on the suit land, though he had also stated that the defendants not having any right to the land at all, they had no right obviously to construct the said plant upon it.

As per the plaintiffs, they had got a demarcation conducted of the suit land though no such demarcation report had actually been led by way of evidence.

The lower appellate Court also recorded a finding that as regards the testimony of DW-1 Ram Singh, he had contended that he had been in possession of the suit land for the past more than 50 years, with the manure pit owned by the defendants, upon which the plaintiffs 'wished to encroach.'

6. Having recorded the aforesaid, that Court came to a finding that though the defendants had not shown as to how they had purchased any property in the village, or received it through inheritance, the plaintiffs had also not placed on record any demarcation report to prove that the suit land was actually one comprised in the '*Khasra*' numbers co-owned by them with other co-sharers and consequently, the identity of the property could not be held to have been proved simply on the basis of the '*Jamabandi*' tendered in evidence, giving therein the '*Khasra*' numbers and area owned by the plaintiffs (present appellants).

Holding as above, the appeal of the respondents-defendants was allowed and the suit of the plaintiffs dismissed, leading to the institution of this 2nd appeal.

7. Before this Court, Mr. Salar, learned counsel for the appellants submitted that the appellants-plaintiffs having duly led documentary evidence in the form of the '*Jamabandi*' Ex. P-1 to prove their co-ownership of the suit property, with the respondents-defendants not having taken any plea of having

perfected their title by way of adverse possession, even though they contended in the testimony of DW-1 that the period for which they had been in possession was 50 years, and with them not having produced any kind of document whatsoever to prove their ownership over what they contended was their property, the learned lower appellate Court wholly misdirected itself in reversing the judgment of the trial Court.

8. Mr. Dhaliwal, learned counsel for the respondents, on the other hand submits that as the property had not been identified by any demarcation, the learned lower appellate Court correctly held that the '*Jamabandi*' relied upon by the plaintiffs was not sufficient evidence to establish that the land occupied by the defendants was actually in the ownership of the plaintiffs.

9. In rebuttal, learned counsel for the appellants refers to an order passed by the learned trial Court [Civil Judge (Junior Division), Sangrur], dated 11.09.2013, dismissing an application filed by the appellants-plaintiffs seeking the appointment of a Local Commissioner who would inspect the suit property and submit a report with regard to the ownership and possession thereof.

10. A perusal of the said order shows that it was held by the trial Court that a Local Commissioner can only collect material to clarify and explain to the Court regarding evidence which is doubtful and could not actually collect evidence for any particular party and further, if there had been any doubt as regards the area of the land in dispute, the identification or location of which was required to be made, only then a Local Commissioner was needed to be appointed, whereas both the parties had in fact admitted that the manure pit is in existence and consequently, as there was no dispute with regard to its existence, there was no demarcation required to be conducted by a Local Commissioner.

11. Having considered the matter, in my opinion, this appeal deserves to

succeed, in view of the fact that admittedly other than the oral testimony of DWs 1 and 2 (including respondent-defendant no. 1 Ram Singh), no documentary evidence whatsoever was produced by the defendants to even show that they owned any land at all, on which they had constructed the manure pit.

Undoubtedly, the onus to prove his case is always on the plaintiff, but with the plaintiffs in the present case duly having produced the '*Jamabandi*' in their favour as Ex. P-1, (which factually is not seen to be refuted even by the defendants, as regards ownership/co-ownership of '*Killa*' no. 350/4, falling in '*Khewat*' no. 518, measuring 1 '*Biswa*' by the plaintiffs and their co-owners), the only question therefore would be whether the said land has been encroached upon by the respondents-defendants, or is it land not belonging to the plaintiffs, with the defendants in any case not having proved ownership of any land whatsoever.

12. Consequently, this appeal is allowed, with the impugned judgment and decree issued by the lower appellate Court, dated 21.04.2015, set aside and that issued by the learned Civil Judge (Junior Division), Sangrur, on 10.12.2013, restored, but with it further directed that in any execution proceedings instituted by the plaintiffs, orders for handing over possession of the suit land would only be passed by the learned execution Court upon getting a demarcation conducted with regard to whether it is the aforesaid '*Khasra*' number or any part thereof that the respondents-defendants are in possession of, or it is a completely different piece of land that they so possess, not belonging to the plaintiff-appellants at all.

No order as to costs.

March 25, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes