

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

RSA No. 2156 of 2014 (O&M)

Date of decision : May 30, 2019

Dharam Pal and others

.....Appellants

Versus

Chaman Lal and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Jai Kumar Chauhan, Advocate
for the respondents.

LISA GILL, J.

Appellants - plaintiffs have filed this appeal being aggrieved of judgment and decree dated 10.03.2014 passed by the learned Additional District Judge, Panchkula whereby judgment and decree dated 14.12.2011 passed by the learned Additional Civil Judge (Senior Division), Panchkula vide which the suit of the plaintiffs was decreed, has been set aside, consequently suit filed by the plaintiffs – appellants stands dismissed.

Brief facts necessary for the adjudication of the case are that a suit for permanent injunction was filed by the plaintiffs (present appellants) seeking to restrain respondents - defendants from interfering in the peaceful possession of the property as detailed in the plaint and the site plan marked as ABCDEF comprised in khasra No. 49/1 situated in *abadi deh*, village Shahpur, Tehsil and District Panchkula. Plaintiffs pleaded that they were permanent residents of village Shahpur, owning and possessing moveable and immovable properties in the village. They claimed to be the owners in possession of the suit property. It is stated that they belong to a poor

community and were residing in the village from the time of their forefathers, having a small piece of land for their residence. The property in question was claimed to be used by them for residential purposes and for collection of cow dung cakes, fuel wood, *goharas* and other purposes. It is further claimed that there are *goharas* of the plaintiffs, *Chhan*, *Chhappar* and some *Kurdies* on the suit property, which they were using for many years without any interference from any quarter. The defendants who are stated to be big land owners of the village, tried to forcibly dispossess them from the suit property on 08.09.2006 and on 19.09.2006. The defendants alongwith hired persons, tried to destroy the *Goharas*, *chhappar* and *Chann* of the plaintiffs in an illegal and forcible manner. They could, however, not succeed due to the intervention of the plaintiffs and other respectable persons of the village. Hence, the suit was filed.

The suit was contested by the defendants while raising a number of preliminary objections. The material averments were denied. It is stated that the plaintiffs are not the owners in possession of the suit property. Their claim was totally denied. The alleged incidents stated to have taken place on 08.09.2006 and 19.09.2006 are denied. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiffs are entitled to the relief of permanent injunction against the defendants as prayed for?OPP.
- ii) Whether the suit of the plaintiffs is not maintainable in the present form as alleged?OPP
- iii) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct as alleged? OPP.
- iv) Whether the plaintiffs have no cause of action to file the

present suit against the defendants as alleged? OPD.

v) Whether the plaintiffs have no locus standi to file the present suit against the defendants as alleged?OPD

vi)Relief.

Evidence was led by both the parties.

Learned trial Court observed that possession of the plaintiffs over the suit property was successfully proved on the basis of the evidence led by them. Accordingly, the suit was decreed. Appeal preferred by the defendants – respondents was, however, allowed by the learned Additional District Judge, Panchkula vide impugned judgment and decree dated 10.03.2014. Consequently the suit filed by the plaintiffs was dismissed. It is observed by the learned Additional District Judge that possession of the plaintiffs over the suit property was not proved on record and, therefore, it was dismissed. Aggrieved therefrom this appeal has been filed.

Learned counsel for the appellants – plaintiffs argues that possession of the plaintiffs over the suit property is duly proved. The site plan (Ex.P1) clearly shows the exact factual position. It is submitted that the learned Additional District Judge, has misread the evidence on record. While referring to the statement of PW2, uncalled inference has been drawn by the learned Additional District Judge, from the statement of the said witness, to the extent that the plaintiffs are not in possession of the suit property. PW2 has only stated that the house in the *abadi* is not on the land in dispute. The said statement cannot detract from the plaintiffs' case. Learned counsel for the appellants refers to the statement of DW2 Bikram to argue that the boundaries, as mentioned in the site plan (Ex.P1), are admitted by this witness. It is further submitted that the attempt of the defendants to take forcible possession of the suit property is apparent from

the complaint made to the police, which is on record as mark 'A'. It is vehemently argued that the learned First Appellate Court has wrongly observed that as the present appellants are not proved to be the owners in possession of the suit property, they are not entitled for injunction as prayed for. Learned counsel argues that it is only possession over the suit property, which had to be proved by the plaintiffs and not their ownership. Relief could not be denied to them only on the ground that title to the property was not proved. The land in question would, in any case, vest in the Panchayat as per Section 2(g)(1) of the Punjab Village Common Lands Act and not with the proprietors of the village. Learned Additional District Judge, Panchkula has returned the finding which is totally perverse and should, therefore, be set aside. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 10.03.2014 passed by the learned Additional District Judge, Panchkula be set aside and suit filed by the appellants be decreed throughout.

Learned counsel for the respondents with equal vehemence has opposed this appeal. It is submitted that the present suit has been actuated due to a dispute which occurred during elections. It is admitted by the plaintiffs that they belonged to rival factions. Learned counsel for the respondents further argues that possession of the plaintiffs over the suit property is not proved by the evidence on record. Site plan (Ex.P1) is not proved on record. Reference is made to the statement of PW2 in this respect. It is further submitted that PW2 has admitted that he is not even residing at village Shahpur. The oral evidence led by the plaintiffs is clearly discrepant and the site plan, on which they are relying upon, is not proved in accordance with law. It is, thus, prayed that this appeal be dismissed with

costs.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Keeping in view the factual matrix of the case, coupled with the evidence on record, I do not find any ground to set aside the impugned judgment and decree dated 10.03.2014 passed by the learned Additional District Judge, Panchkula. This is so for the reasons as detailed hereinafter.

In order to prove their case, the plaintiffs examined PW1 Mohender Singh and PW2 Chattar Singh. I have perused the statements of both the said witnesses. PW1 has clearly stated that his brother Sardara Ram had contested the elections of Sarpanch against Chaman Lal and that he himself had submitted a complaint against Chaman Lal about one or two years ago. He further stated that Sardara Ram is the son of his paternal uncle (chacha). PW1 is admittedly not a summoned witness. PW1 has specifically stated that the plaintiffs do not have any land etc. in village Shahpur and that plaintiff Chattar Singh was residing in village Narainpur. PW1 has stated that the dispute had arisen after the elections. PW2 Chattar Singh in his cross examination has admitted that he as well as the other plaintiffs did not have any land etc. for cultivation in village Shahpur and neither were they *khewatdar* in this village.

PW2 further admitted that he was living in his residential house which he had constructed in his fields in village Narainpur though he further stated that he also had a house in village Shahpur. PW2 further went on to clarify that his residential house situated in the *abadi* of village Shahpur is different from the land which is in dispute in the present proceedings. Disputed land is stated to be within the *lal lakir*. PW2 categorically admitted

in his cross examination that the site plan (Ex.P1) of the disputed site was prepared by the draftsman at their instructions in the Court premises and the draftsman was not taken to the spot, though it is denied that Ex.P1 is incorrect. At this point of time, it is relevant to mention that the description of the property in question and the landmarks including that of the Public Health Tubewell situated across the road, as mentioned by the plaintiffs' witnesses lend credibility to the site plan (Ex.D19) produced by the defendants. It is pertinent to note that the plaintiffs Jeet Ram/Jeet Singh son of Sh. Garibu and Sohan Lal/Singh son of Sh. Sarwan Singh purportedly executed affidavits dated 03.10.2006 before the learned trial Court to the effect that the case in question has been filed on their behalf by someone else. It is denied on behalf of the plaintiffs that any such affidavits were submitted by the two plaintiffs. However, it is to be noticed that none of the said plaintiffs i.e. Sohan Lal or Jeet Singh stepped in the witness box to assert their right or to say that the said affidavits were never executed by them. There is nothing on record to indicate any action whatsoever which was taken against the defendants on the basis of the alleged complaint by the plaintiffs. PW1 as well as PW2 have clearly deposed that none of the plaintiffs are in fact residing at village Shahpur.

It has been held in **Dhoom Singh versus Baishakhi Ram and others Vol. CXIV (1996-3) 542** that mere use of a plot by a resident of the village cannot be equated with possession. A user of a plot has to prove by his overt acts, his possessory title over the disputed site and that he wanted to exclude all else from the uses of such plot to his advantage. Merely by placing dung cakes or by tethering the cattle by installing pegs or placing carts, evidence of possession cannot be established or completed. The

plaintiffs – appellants in the present case have clearly failed to prove their possession on the basis of the evidence on record. Therefore, learned Additional District Judge, Panchkula has rightly allowed the appeal filed by the defendants – respondents and set aside the judgment and decree dated 14.12.2011 passed by the learned Additional Civil Judge (Senior Division), Panchkula. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in judgment and decree dated 10.03.2014 passed by the learned Additional District Judge, Panchkula, which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

May 30, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No