

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

RSA No. 1919 of 2017 (O&M)

Date of decision: 15.05.2019

Dev Raj

... Appellant

Vs.

Jaswant Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Bahl, Senior Advocate with
Ms. Vedika Gandhi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present regular second appeal is, at the instance of the plaintiff, directed against the concurrent findings of fact, whereby suit for declaration claiming possession over suit property bearing Hadbast No. 157, situated in revenue estate of village Barewal Awana and also restraining defendants No. 1 and 2 not to interfere in peaceful possession of the plaintiff, as well as, not to alienate therefrom in any manner or raise any sort of construction over the plot in question, has been dismissed.

Plaintiff, in plaint, alleged to be absolute owner in possession of plot no. 32 as detailed in head note of the plaint situated in Barewal Awana, in H.B. No. 157 bearing khasra No. 350/157 had purchased vide sale deed dated 28.05.1990. Mutation No. 7637 in this regard was also incorporated in the revenue record. The sale deed reflected to, at relevant point of time a boundary wall and one room, in possession. Defendant Nos. 1 and 2 wanted to take forcible possession on the basis of above forged sale deed. The plaintiff served a notice upon defendant no.1 on 25.06.2005. Aforesaid notice was duly replied explaining to have purchased property in dispute from one Gopal Singh son of Chet Singh. Original owners

Amarjeet and Jagdish Singh had drawn a lay out of plot 32 to 35 i.e. plotting of land measuring 3 K 12 marlas. A written complaint was also made by plaintiff to the Station House Officer, Sarabha Nagar, Ludhiana on 20.07.2005 when possession of plaintiff was threatened and defendants wanted to get the electricity connection, which was totally illegal. Plaintiff for purpose of demarcation also submitted an application to Tehsildar on 13.10.2005 but it was advised not to obtain any demarcation as there was no dispute.

Defendant No.1 contested suit by filing written statement averring to be exclusive owner in possession of property measuring 0B-2B-0B out of khasra number 350/157, khata No. 1021, Khatoni no. 1377 situated in revenue estate of Barewal Awana, Ludhiana, which was purchased from Gopal Singh son of Chet Singh through General Power of Attorney Amarjit Singh son of Harbans Singh vide sale deed dated 22.5.1990 with specific boundaries. The mistake was corrected and rectified by Supplementary/tatima deed on 18.6.1993. Mutation no. 9620 was also sanctioned in this regard. Alleged sale deed of the plaintiff was not related to the property of defendant No.1-Jaswant Kaur. Defendant no.1 had been in continuous and un-interrupted possession of the property as owner for the last 16 years and enjoying the same since then. Possession of the plaintiff over the property in dispute was allegedly denied by defendant no.1 and urged for dismissal of the suit of the plaintiff.

After framing of issues, the plaintiff in support of his claim, examined five witnesses including himself and also placed various documents on record, thereafter closed his evidence.

On the other hand, the defendants also examined as many as 12 witnesses in support of their claim and also produced on record various documents.

The trial Court after noticing the evidence led by both the parties, gave credence to the sale deed of defendant i.e. 22.05.1990 viz-a-viz the sale deed of the plaintiff dated 28.05.1990 and dismissed the suit of the plaintiff.

The appeal filed by plaintiff was also dismissed by Additional District Judge, Ludhiana on 15.11.2016.

Mr. Vikas Bahl, learned Senior counsel assisted by Ms. Vedika Gandhi, learned counsel appearing on behalf of the appellant raised the following submissions:

(i) The revenue record i.e. Jamabandi Ex.P-14 reflected the share of the plaintiff-Dev Raj and as well as the mutation Ex.D51. Further Ex.D-51 revealed the ownership of Gopal Singh over a chunk of land measuring 3 k 12M. In fact the status of the appellant and defendant no.1 shown as one of the co-sharers but the Courts below non-suited by declining the declaration qua possession. Even plaintiff has been able to prove the possession to the extent of his share holding, which ought to have been granted, resulting into gross illegality and prejudice caused to the plaintiff.

In view of the aforementioned judgment and decree, plaintiff has been deprived of even to claim relief of partition. In other words, his remedies in view of the judgment and decree deemed to have been exhausted.

The other ground for non-suiting of the plaintiff is that plan of the colony was unauthorized but by way of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, indulgence of this Court is being sought for proving on record the sanctioned plan. The aforementioned act is required to be proved owing to promulgation of scheme by Government for regularization of unauthorized colonies on certain payment/costs.

I have heard learned senior counsel assisted by Ms. Vedika Gandhi, learned counsel appearing on behalf of the appellant.

The arguments in the first glance made by learned senior counsel appears to be attractive enabling the Court to call upon from the opposite side, but on going through the record of the trial Court, I am of the opinion that the relief extracted above in the plaint, was not as per the revenue record. Jamabandi Ex.P-14 shows the name of both the co-sharers of the property in dispute, which was purchased from Gopal Singh. The plaintiff and the defendant No.1 had purchased the plot from Gopal Singh through attorney Amarjit Singh. Though in the written statement, this was not disclosed but from sale deed Ex.D-47, it is revealed that alleged plot was sold by attorney holder Amarjit Singh. The best possible evidence i.e. demarcation report, which would enabled the Court to form the opinion with regard to the relief sought has not been brought. In the absence of the description, the possession could not have been protected by way of injunction. Both the Courts below i.e. trial Court and appellate court did not disbelieve the sale deeds of the respective parties and the co-ownership.

For the sake of brevity, para no.22 of the Appellate Court reads

as under:

“22. Learned counsel for the defendants further argued that even if version of the plaintiff regarding sale deeds is accepted, the sale deed in favour of defendant is prior in time and prior sale deed is to prevail. Learned counsel for the plaintiff argued that wrong khasra number was mentioned in the sale deed in favour of defendant and he got corrected Tatima sale deed much later and therefore he cannot take benefit of sale deed executed prior to the sale deed in favour of the plaintiff. However, as discussed earlier, though the plaintiff is mentioned to have purchased specific plot, but the mutations have been sanctioned as share of total land, but the mutations have been sanctioned as share of total land and both the parties are shown to be co-sharers in the total land bearing khasra No. 350 in the revenue record. Though once the land is converted into residential property, the revenue record ceases to have any significance, but the cost of repetition, in the present case, though the plaintiff has claimed that there was some colony carved out and plotting done, but same was unauthorized colony and is not reflected in any record i.e. Revenue or Municipal record or even no document of parties or the person, who prepared the colony, has been proved to show the existence of specific plots and numbering thereof. The plaintiff is claiming ownership and possession of the plot with specific boundaries. The plots, which are mentioned to be adjoining the plot of plaintiff in sale deed in his favour are in khasra no. 346, while the plaintiff is claiming his plot in khasra no. 350 and disputed plot is also in khasra no. 350. Khasra Nos. 346 and 350 do not adjoin each other and therefore the

identity of plot purchased by plaintiff is not relatable to the plot in dispute, which is in possession of defendant. The plaintiff has further made allegations that after receipt of notice, defendant no.1 got installed electric connection under the influence of defendant no.2, who was an officer in PSEB and is son-in-law of defendant no.1. Though defendant No.2 did not come present to contest the case, but he has appeared as witness and has denied these allegations. The plaintiff has also failed to prove on record by leading any evidence or even from the cross-examination of defendant's witnesses, if the electric connection was got installed wrongly under the influence of defendant no.2.” .

In such a situation, indulgence of the Court should have for moulding the relief as per the provisions of Order 7 Rule 7 of the Code of Civil Procedure, same reads as under:-

“7. Relief to be specifically:-

Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent if it had been asked for. and the same rule shall apply to any relief claimed by the defendant in his written statement”

The contents of written statement do not convey that the property allegedly owned by plaintiff was actually in possession of the attorney holder.

In my view, dismissal of the suit would not take away the right of the plaintiff to seek separate possession by way of partition by meets and bounds. In view of the facts and circumstances and the aforementioned

observation of mine and the findings extracted above, the status of the parties being co-sharers would not take away the intended right of the plaintiff as noticed above, while affirming the judgments and decrees of Courts below, the second appeal is disposed of, leaving to the parties to avail the remedy in accordance with law.

(AMIT RAWAL)
JUDGE

15.05.2019
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Whether Speaking/Reasoned Yes/No
Whether Reportable Yes/No