

In the High Court of Punjab and Haryana at Chandigarh

RSA- 5831 of 2014(O&M)

Date of Decision:6.3.2019

Kiran Pal and others

---Appellants

vs.

Rajender and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. J.S.Hooda, Advocate
for the appellants

Mr. Ashish Gupta, Advocate
for respondent No. 1

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings of fact recorded by the courts whereby suit for permanent injunction filed by the respondent-plaintiff was decreed by the trial court vide judgment and decree dated 27.11.2012 and appeal preferred by unsuccessful defendants-appellants came to be dismissed by the Additional District Judge, Mewat.

The respondent-plaintiff claimed himself to be in possession of residential plot, detailed in para 1 of the plaint being proposed vendee under agreement of sale dated 14.8.2007 executed by Sh. Hazari Lal son of Hari Singh defendant No. 1. It is averred that defendants are threatening to dispossess the plaintiff from suit land and they should be restrained from interfering in possession of suit property by the respondent-plaintiff.

Defendant No. 1 was proceeded against ex parte. The suit was

contested by defendants No. 2 to 7 including the present appellants. They filed written statement raising preliminary objections regarding cause of action, locus standi, concealment of facts etc. They controverted the allegation that the respondent is the owner and in possession of suit property with the averments that they are in continuous possession of suit property for the past more than 40 years. They are regularly paying chullah tax of suit property to gram panchayat and have constructed boundary walls and other structures over the suit property. They have installed fodder cutting machine over suit property and plaintiff has no concern with the same. They have also filed counter claim claiming themselves to have become owner of suit property on the basis of adverse possession. It is further averred that they are residing in the suit property. They have constructed tin shed and other structures over it. Agreement dated 14.8.2007 is a false and forged agreement and plaintiff is threatening to dispossess the defendants from the suit property.

Respondent-plaintiff filed reply to the counter claim and contested claim of the appellants. It is pleaded that he purchased the suit property vide registered sale deed bearing vasika No. 2945 dated 7.11.2007 and has made construction over the land.

The controversy between the parties led to framing of issues, reproduced in para 6 of the judgment of trial court.

To prove his case, plaintiff appeared in the witness box and examined Birender PW2, Ramu PW3 and Khushal Sharma Draftsman PW4. To rebut case of the plaintiff, Kiran Pal appellant No. 1 appeared in the witness box and defendants examined Khushal Sharma Draftsman DW2

and Giriraj DW3.

The learned trial court accepted plea of the respondent that he is in possession of suit land and accordingly suit for permanent injunction was decreed and the defendants were restrained from interfering in possession of the plaintiff over suit property and dispossessing him from the same. However, counter claim preferred by defendants No. 2 to 7 was dismissed with no order as to costs.

The appeal preferred by defendants Kiran Pal, Sitaram, Sohan Pal and Sohan Lal sons of Ram Sarup was dismissed by the Appellate Court whereby findings recorded by the trial court were affirmed without any variance.

Counsel for the appellants would argue that findings recorded by the courts in respect of possession of suit property with the respondent-plaintiff suffer from grave error rather perversity, therefore, cannot be allowed to sustain. It is further argued that suit property is admittedly situated within the lal dora of village Indri, Tehsil Nuh District Mewat. The respondent has relied upon agreement to sell dated 14.8.2007 and sale deed dated 7.11.2007 executed during pendency of the suit to claim himself to be owner and in possession of the suit property but there is no documentary evidence produced on record with regard to ownership of Hazari Lal who had executed sale deed dated 7.11.2007. It is further argued that evidence led by the respondent in support of his possession over the suit property has been sufficiently rebutted by the appellants in view of testimony of Kiran Pal, Giriraj DW3 and Khushal Sharma Draftsman DW2. It is further argued that respondent being the plaintiff is under an obligation to establish his

possession over the suit property and he can not derive any advantage to his contention from weakness, if any, of the appellants/defendants. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court **Sri Thimmaiah vs. Shabira and others 2008(1) RCR(Civil) 915** and **P.H. Dayanand vs. S.Venugopal Naidu and others 2009(1) RCR (Civil) 304**. Further reference has been made to judgment of this Court **Shri Chand vs. Kiran 1992(1) R.R.R. 487**.

Counsel for respondent No. 1/plaintiff, on the contrary, has supported concurrent findings of fact. He would argue that the court in second appeal can neither re-appreciate the evidence nor can intervene in judgments of courts below merely because another view is possible. It is further argued that as the defendants claimed ownership on the basis of adverse possession, it necessarily implied that they do not assert right of ownership qua suit property. It is further argued that appellants/defendants failed to adduce sufficient much less cogent evidence that property in question is bounded by boundary wall on two sides and it is difficult to accept that a person would maintain his residence in an open plot for the past 40 years, as claimed in the written statement.

I have heard counsel for the parties, perused the paper book and documents, copies whereof were made available by counsel for the appellants during the course of hearing, correctness of the same has been vouched by counsel for the respondent-plaintiff.

Perusal of averments raised in the plaint makes it evident that the property is described as a residential plot measuring 222 square yards (50 x 40 feet) depicted with letters ABCD and shown in red colour in the

site plan within abadi deh and lal dora of village Indri with boundaries described in para 1 of the plaint. The respondent claimed himself to be in possession of suit property on the basis of agreement dated 14.8.2007 executed by Hazari Lal defendant No. 1. The appellants-defendants raised a plea that they have constructed their residential houses over the suit property and the plaintiff never objected to the same. In para 2 of reply on merits, it is averred that defendants constructed one tin shed khors and two side boundary walls, installed fodder cutting machine and other structures over the suit property. Since the suit property is situated within lal dora of the village, there is no record maintained by the authorities in respect of ownership and possession of the suit property.

Rajinder, the respondent appeared in witness box and reiterated his case set up in the plaint. His testimony is corroborated by Birender PW2 and Ramu PW3 who are stated to be living in the neighbourhood of Rajinder who is maintaining his residence in another property situated within lal dora of the village. The witnesses examined by the respondent are quite categoric in their depositions that area of the disputed property is approximately 220-225 square yards. Testimonies of the witnesses examined by the respondent are quite accurate with regard to boundaries of the property depicted in the site plan and para 1 of the plaint. No such suggestion was put to the witnesses that area of the property in question is 175 square yards or the same is not 220-225 square yards. Counsel for the appellants has failed to point out any materials extracted in cross examination of the witnesses that either there is any structure existing at the disputed site or there is boundary wall on two sides of the property in

question. In this view of the matter, the courts have rightly relied upon testimony of Rajinder and his witnesses to accept contention of the respondent that the property measures 220-225 square yards and the same is in possession of Rajinder in whose favour sale deed has been executed by Sh. Hazari Lal.

Perusal of cross examination of the witnesses would reveal that there is not even a suggestion to the witnesses that Hazari Lal was not owner of the suit property and as such he was not competent to execute the sale deed in favour of Rajinder. In cross examination of Birender PW2, he was suggested that Hazari Lal was closely related to defendants No. 2 to 7 and this fact indirectly shows that the defendants wanted to set up their possession being relatives of Hazari Lal, owner of the property.

The appellants examined Khushal Sharma Draftsman DW2 and Giriraj DW3 besides statement of Kiran Pal defendant No. 2. Kiran Pal in the concluding lines of his cross examination has stated that he can not tell what is written in the affidavit Ex. DW1/A, tendered by way of examination in chief of Kiran Pal. This statement of Kiran Pal demolishes evidential value of his testimony by way of examination in chief, therefore, the appellants cannot derive any advantage to their contention from the facts stated by Kiran Pal. As soon as testimony of Kiran Pal is taken out of consideration, there is virtually no evidence by the defendants as a party to counter case of the respondent-plaintiff.

The appellants examined Khushal Sharma Draftsman who was also examined as a witness by the plaintiff to prove site plan Ex. PW4/A, referred to in the plaint. The trial court did not bother to examine that since

Khushal Sharma has already been examined as a witness by the respondent and cross examined by the defendants, how could he be examined as a witness by the defendants as well. In the given circumstances, the appellants cannot derive much advantage from testimony of Khushal Sharma with regard to status of the property measuring 175 square yards, stated to be in possession of the appellants.

Giriraj DW3 filed affidavit Ex. DW3/A by way of examination in chief. The affidavit filed by Giriraj is verbatim reproduction of the affidavit filed by Kiran Pal and it creates doubt if affidavit of Giriraj was prepared on his instructions. The testimony of Giriraj alone is not sufficient to rebut the evidence adduced by respondent-plaintiff in respect of his possession over residential plot measuring 220-225 square yards. In this view of the matter, I find it difficult to accept contention of the appellants that consistent findings recorded by the courts suffer from an error much less perversity that would call for intervention. The judgments relied upon by counsel for the appellants has got no bearing on the facts and circumstances of the instant case, therefore, the appellants cannot derive any advantage thereof for seeking setting aside of the judgments and decrees passed by the courts.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

6.3.2019
paramjit

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