

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

-.-

RSA 3240 of 2018 (O&M)

Date of decision: 15.03.2019

Sant Ram

.....*Appellant*

Versus

Dolly Vijay and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. S M Sharma, Advocate
for the appellant
Mr. I S Bhatia, Advocate
for the respondents/caveators

-.-

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings of fact recorded by the Courts whereby suit for declaration that the plaintiffs (respondents herein) are joint owners of property measuring 10 marlas comprised in khasra number 725/398/1 (5-7) situated at Basti Mithu near Jainsons Industries, Tehsil and District Jalandhar, fully described in head note of the plaint and shown red in the site plan attached and for mandatory injunction directing appellant/defendant to hand over vacant possession of the property in dispute to the respondents after demolishing and removing *malba* of illegal and unauthorised structure raised on the plot in dispute was decreed by the trial Court vide judgement and decree dated 20.09.2017 and appeal preferred by unsuccessful defendant/appellant came to be dismissed by the Additional District Judge, Jalandhar.

The respondents/plaintiffs staked their claim to the suit property on the premise that Karam Singh Vijay, sole proprietor of M/s Electro Automatics had been doing business at 5, Mandi Road, Jalandhar. He purchased plot measuring 1 kanal out of aforesaid khasra number vide sale deed no. 2456 dated 04.07.1980. Out of land purchased by Karam Singh Vijay, he alienated portion of land measuring 10 marla, thus, left with 10 marla of land reflected in the revenue records in the name of firm M/s Electro Automatics. After death of Karam Singh Vijay due to cardiac disease on 01.05.2002, the property in question is inherited by the respondents being class I heirs to the extent of 1/4th share each. The respondents approached the revenue authorities for incorporation of their names in the revenue records and they came to know that the suit property is under illegal and unauthorised possession of appellant/defendant who has no right, title or concern with the same.

The appellant/defendant filed the written statement and raised preliminary objections, inter alia non-maintainability of the suit, estoppel, inappropriate valuation, suit being without cause of action, concealment of material facts, suit being barred under Section 41 (h) of the Specific Relief Act, limitation, non-joinder and misjoinder of parties. It is averred that Raja Ram, grandfather of the appellant shifted to the property in dispute in the year 1947 and at that time, it was an isolated area and 'bhand' community established their locality in the property in dispute. Raja Ram raised construction upon the property in dispute with his hard earned money. Marriage of father of the appellant namely Fajja Ram was solemnised in the property in dispute as well as marriage of the appellant and his siblings was

performed there. Ration card and electricity bills of the property are claimed to be in favour of the appellant. Possession of the appellant along with his family is actual, peaceful, uninterrupted and without any sort of interference from any side. All other material averments of the plaint have been denied with a prayer of dismissal of the suit.

The trial Court framed issues, reproduced in para 4 of the judgement. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court declared the respondents/plaintiffs to be owners of the suit property and on the basis thereof, they were held entitled to mandatory injunction as prayed for. Legal objections raised by the appellant in respect of non-maintainability of the suit, suit being barred under Section 41 (h) of the Specific Relief Act, without any cause of action and the respondents have not approached the Court with clean hands were answered against the appellant and consequently, the suit was decreed and the appellant was directed to hand over vacant possession of the suit property, noticed hereinbefore. Indisputably, the appeal preferred by the appellant did not find favour with the first appellate Court.

Counsel for the appellant/defendant would argue that findings of the Courts declaring the respondents to be owner of the suit property i.e. land underneath construction existing at the spot are the result of misreading of evidence. It is argued that as per plea of the respondents, Karam Singh Vijay was the proprietor of M/s Electro Automatics and land measuring 1 kanal was purchased in the name of said concern. It is argued that no clear

much less cogent evidence has been produced to prove that Karam Singh Vijay was the proprietor of M/s Electro Automatics. It is further argued that copy of income tax return of M/s Electro Automatics is neither the original nor proved in accordance with law. It is argued with vehemence that as the respondents failed to establish that Karam Singh Vijay was the proprietor of M/s Electro Automatics, they cannot derive any strength to their case from sale deed dated 04.07.1980. In addition, it is argued that in the revenue records produced before the Court i.e. copy of jamabandi Ex.P1, M/s Electro Automatics Works is recorded to be co-owner to the extent of 20/214th shares which also falsifies and belies plea of the respondents that land belonged to Karam Singh Vijay.

Another submission made by counsel for the appellant is that the respondents filed suit for mandatory injunction seeking recovery of possession in place of instituting a suit for possession on payment of requisite Court fee. A specific objection was raised by the appellant that the suit in the present form is not maintainable and the trial Court framed issue No. 3 in this regard but wrongly answered the said issue in favour of the respondents/plaintiffs. It is argued that this is not plea of the respondents that the appellant is licensee of suit land, therefore, suit for mandatory injunction is not maintainable and as such judgements and decrees passed by the Courts are liable to be set aside on this score alone.

Counsel representing respondents/plaintiffs has supported the consistent findings recorded by the Courts with the submissions that the Court in second appeal cannot re-appreciate the evidence nor can interfere in concurrent findings merely because a different view is possible. It is

further argued that sale deed is a document of title and the same is marked as Ex.P2. The said sale deed in respect of land measuring 1 kanal, was executed in favour of M/s Electro Automatics and the same also finds reference to Shri Karam Singh Vijay. The appellant has not claimed ownership right in the suit land. He has not raised a plea of having become owner of suit land by way of adverse possession. It is argued with vehemence that a person in an unauthorised possession cannot retain possession for all times to come and true owner is entitle to recover possession from an unauthorised occupant by taking recourse to remedy in law.

With regard to contention that the suit is not maintainable in the present form, it is argued that issue No. 3 was answered against the appellant by the trial Court but before the first appellate Court, there is no challenge to findings of the trial Court on issue No. 3 and as such, findings of the trial Court on issue No. 3 have attained finality.

I have heard counsel for the parties, perused the paper book and records.

Respondents/plaintiffs have claimed their co-ownership of land measuring 10 marla on the basis of sale deed in respect of 1 kanal land executed in favour of M/s Electro Automatics, stated to be proprietorship of Karam Singh Vijay. Perusal of sale deed Ex.P2 makes it evident that it makes reference to M/s Electro Automatics and payment of sale consideration by purchaser Karam Singh Vijay who has signed the sale deed as purchaser whereas seller is Arvinder Singh. The sale deed in question has not been challenged by its executant; therefore, the respondents were

not required to prove the sale deed by examining other witnesses. On due consideration of pleading of the parties, it becomes an undisputed position of the case that there is no challenge qua identity of suit property or the same being part of khasra number 725/398/1. In the jamabandi, Ex. P1, name of owner is recorded as Electro Automatics Works in place of M/s Electro Automatics. Even if the revenue authorities have committed an error in recording the correct name of the concern when otherwise jamabandi is not a document of title but is an evidence of title, entries in jamabandi cannot be given primacy vis-à-vis sale deed Ex.P2, a document of title. In this view of the matter, I find myself unable to accept contention of the appellant that the respondents have failed to prove that previously Karam Singh Vijay was owner of the suit land and on his death, they have become co-owners being successors-in-interest of Karam Singh Vijay.

This brings the Court to question of maintainability of suit in the present form. No doubt, the respondents claimed the appellant to be in illegal and unauthorised possession of the suit land, therefore, appropriate remedy to recover possession of suit land was to institute suit for possession while seeking declaration qua their ownership. However, the plaintiffs sought mandatory injunction for issuance of directions to the defendant to hand over vacant possession of the disputed property. The appellant raised a specific objection with regard to non-maintainability of suit in the present form and the trial Court framed issue No. 3 on this aspect of the matter. The trial Court answered issue No.3 against the defendant/appellant while dealing with issues No. 3 and 5 jointly. It was held that the plaintiffs have knocked doors of the Court for crystallization of their rights. No evidence

has been led as to how suit of the plaintiffs is not maintainable and they have no cause of action to file the suit.

Counsel for the appellant, in response to pointed query, has fairly conceded that in the grounds of appeal raised before the first appellate Court, there is no challenge to findings of the trial Court on issue No. 3. After going through the judgement passed by the Court in appeal, he has further conceded that even during course of hearing, no challenge has been laid against findings of the trial Court on issue No. 3. It is not plea of the appellant that arguments were advanced before the first appellate Court on the question of non-maintainability of the suit but the same were not adverted to by the appellate Court. In the given scenario, it can safely be held that findings of the trial Court on issue No. 3 have attained finality between the parties. There cannot be dispute that even an erroneous finding by a Court shall hold the field unless challenged and set aside in appropriate proceedings. That being so, it is not open for the appellant to challenge the question of maintainability of the suit in the present form, before this Court.

No other point has been raised.

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

(Rekha Mittal)
Judge

15.03.2019

Mohan Bimbura

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

