

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3899 of 2018 (O&M)

Date of decision : 8.7.2019

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Puran Singh and others

.....Appellants

vs.

Dalip Kaur

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ashok Verma, Advocate for the appellants.

Mr. Tribhavan Singla, Advocate for the respondent

...

H. S. Madaan, J.

Briefly stated, facts of the case are that plaintiff – Dalip Kaur daughter of Bachan Singh resident of village Pharwahi, Tehsil and district Barnala, had filed a civil suit against defendants Puran Singh s/o Babu Singh and his two sons Tarsem Singh and Balwinder Singh, residents of Parjapat Basti Pharwahi, Tehsil and District Barnala, craving for grant of mandatory and permanent injunction on the averments that she is owner of $\frac{1}{2}$ share in the land measuring 3 kanal 17 marlas comprised in Khewat No. 576, Khatauni No.979, Khasra No. 3510 (2-19), 3516 (0-18), situated at village Pharwahi as per jamabandi for the year 2008-09 and she had inherited remaining $\frac{1}{2}$ share in that property from Surjit Kaur widow of Teja Singh by way of Will dated 14.12.1990, in that way becoming owner of the entire

suit land, after death of Surjit Kaur; that on 16.9.2010, the defendants took forcible possession of the property and started raising construction on the same; that they have constructed a room and also laid a floor, besides installing a gate and defendant No.1 has wrongly obtained electric connection in the name of his son Tarsem Singh for the suit property; that the defendants have threatened to raise further construction over the property in order to change its nature; not listening to the request of the plaintiff to desist from doing so. Feeling aggrieved, she brought the suit in question praying that a direction be issued to the defendants to remove the construction over the property and deliver the possession of the suit property to the plaintiff, in addition to that she prayed for permanent injunction restraining the defendants from changing the nature of the property in any manner.

On being put to notice, defendants appeared and filed written statement contesting the suit, challenging locus standi of the plaintiff to bring the suit in question, further submitting that no cause of action had arisen to the plaintiff to file the suit; that the suit was not maintainable and plaintiff was estopped from filing the suit. On merits, the defendants contended that the plaintiff had no concern with the suit property. And the Will set up by the plaintiff in her favour is forged and fabricated documents; that as a matter of fact, the defendants are in possession of the suit property since long and the plaintiff never remained in its possession; that water and electricity connection have already been released in the name of Tarsem Singh, to which the plaintiff did not raise any objection; that the defendants are residing in the property in dispute, tethering their

cattle therein; that the construction over the property in dispute was raised about 15 years back; the defendants denied that they had taken possession of the property after filing of the suit. In the end they prayed for dismissal of the suit.

The plaintiff filed replication, controverting the allegations in the written statement, whereas reiterating the averments in the plaint.

From the pleadings of the parties, following issues were framed:-

- (i) Whether the plaintiff is entitled for the relief of permanent and mandatory injunction as prayed for ? OPP
- (ii) Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
- (iii) Whether the plaintiff has not come to the court with clean hands and has concealed material facts? OPD
- (iv) Whether the plaintiff is estopped by his own act and conduct ? OPD
- (v) Relief.

Parties led evidence in support of their respective claims.

In order to prove her case, plaintiff Dalip Kaur examined herself as PW-1 and tendered in evidence copy of jamabandi for the year 2008-09 as Exhibit P-1, mutation No. 9004 dated 3.11.2011 as Exhibit P-2, copy of application Exhibit P-3, statement of Tarsem Singh Exhibit P-4 and file Exhibit P-5, and thereafter closed the evidence.

On the other hand, defendants examined Piyush Aggarwal,

SDO, PWD (B&R), Barnala as DW-1, Tarsem Singh as DW-2 thereafter closed their evidence

In rebuttal, the plaintiff tendered report of Local Commissioner Exhibit P-7, attendance List Exhibit P-8, site plan Exhibit P-9 and Jamabandi Exhibit P10 and thereafter closed the rebuttal evidence.

After hearing the arguments, the trial Court decided issue No. 1 in favour of the plaintiff and against the defendants, issues No. 2 to 4 were decided against the defendants and in favour of the plaintiff. Consequently, in view of the findings returned on the issues, the trial court vide judgment and decree dated 6.1.2016, decreed the suit of the plaintiff, finding her entitled to the relief of mandatory injunction directing the defendants to deliver the possession of the property in dispute to the plaintiff by demolishing the construction raised over the same by the defendants on their own expense within three months from the date of judgment otherwise the plaintiff could obtain the same through Court. Further, plaintiff was found entitled to relief of permanent injunction and defendants were restrained from raising any further construction over the suit property, so as to change the nature of the same.

The defendants felt aggrieved by the said judgment and decree and approached the court of District Judge, Barnala, by way of filing an appeal, which was assigned to Additional District Judge, Barnala. However, the said appeal was also dismissed vide judgment dated 11.4.2018.

Still feeling dissatisfied, defendants have knocked at the door of this Court, by filing the present Regular Second Appeal, notice of which was given to the plaintiff-respondent, who has put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record and I find that there is absolutely no merit in the appeal.

Both the Courts below have returned concurrent findings that version of the plaintiff was corroborated by the evidence adduced by her, both oral as well as documentary, including jamabandi's Exhibit P-1 and P-10, proving her title to the suit property and further mutation Exhibit P-2 shows that she had inherited the suit property from Surjit Kaur by way of Will and this mutation is incorporated in jamabandi Exhibit P-10.

Whereas defendants have failed to show any legal right in the land. They mainly relied upon Exhibit P-6 vide which they had allegedly purchased the property from Mehar Singh son of Anokh Singh. However, Khasra number of the property is not mentioned therein and therefore, it cannot be said that the document relates to the suit land. Furthermore, it is an unregistered document and is inadmissible in evidence, for want of registration. It has further been observed that since Mehar Singh is not shown to have any right or interest in the suit land. He could not possibly pass any valid title or right to the defendants. In view of the cogent and convincing evidence adduced by the plaintiff, the report by the Local

Commissioner, cannot be given much weightage. The plaintiff having valuable right and interest in the suit property and nature of possession of defendants being illegal and un-authorized, they have no right to protect the same as against the plaintiff. The defendants cannot be allowed to take possession of any piece of land, start raising construction over there and then claim that they have right to protect their possession. The entire approach of the defendants is wrong and misconceived.

Learned counsel for the appellants has contended that the plaintiff should have proved the Will; that the plaintiff is to prove her own case without taking advantage of the weaknesses in the case of the defendants, which she has not been able to do.

Whereas learned counsel for the respondent-plaintiff has vehemently contested the contention stating that the plaintiff has successfully proved her title to the suit land by proving revenue record as well as adducing oral evidence and as a matter of fact defendants have no right or interest in the suit property. They are trespassers and they are liable to vacate the possession in favour of the plaintiff.

After hearing learned counsel for the parties, I find that both the Courts below recorded sufficient findings with regard to the plaintiff being owner of the suit property and defendant having no right or concern therewith and nature of their possession being unauthorized, they are liable to vacate the possession by demolishing of the structure raised by them in the suit land and they cannot raise

any further construction thereon.

Counsel for the appellants has referred to following various judgments:-

1. Major Singh and another vs. Mukhtiar Singh 2009 (4) RCR (Civil) 97;
2. Smt. Dhiro vs. Sadhu Singh 2007 (1) RCR (Civil) 821;
3. Lajpat Rai vs. Vidya Wati 1997 (4) RCR (Civil) 130;
4. Fakira and another vs. Mittul Mongia and others 2014 (62) RCR (Civil) 501;
5. Chandrasen vs. Surendra Verma and others 2014 (47) RCR (Civil) 72;
6. State of Madhya Pradesh vs. Nomi Singh and another 2015 (14) SCC 450;
7. Ramesh Chand Ardawatiya vs. Anil Panjwani 2003 (2) RCR (Civil) 828;
8. Sukhi vs. Chandra Sen and another 1986 RajasthanLR 619
9. S.R. Srinivasa vs. S. Padmavathamma 2010 (5) SCC 274;
10. Gurcharan Singh and others vs. Angrez Kaur and another 2008 (4) RCR (Civil) 178;
11. Prem Singh vs. Gurdial Singh 1999(3) RCR (Civil) 525;
12. Lalitaben Jayantilal Popat vs. Prangnaben Jamnadas Kataria and others 2009 (1) RCR (Civil) 715;
13. Dhian Singh vs. Sheela Devi and others 2008 (1) RCR (Civil) 792;

14.Pritam Singh and others vs. Paramjit Kaur 2015 (4) RCR (Civil) 580;

15. Durga Das vs. Collector and others 1997 (2) RCR (Civil) 84;

16.H. Lakshmaiah Reddy and others vs. L. Venkatesh Reddy 2015 (2) RCR (Civil) 997;

17.Shiv Chand vs. Parwati Devi 2015 (83) RCR (Civil) 41

18.Ballabgarh Co.-Op. Marketing Society vs. Haryana Co.-Op. Supply and Marketing Federation 2012 (5) RCR (Civil) 754 and

19.Arjunan vs. D. Kethu Munuswamy @ Munuswamy and another 2012 (6) RCR (Civil) 2172.

But all these judgments do not come to the help of appellants, due to different facts and circumstances and the context in which such observations have been made.

Counsel for the appellants has contended that plaintiff has not proved the Will in her favour stated to have been executed by Surjit Kaur in terms of Section 63 of the Succession Act and Section 68 of the Evidence Act. This arguments is without any merit. When mutation has been sanctioned in favour of the plaintiff and incorporated in the revenue record, there was no necessity of plaintiff proving the Will by examining the attesting witnesses thereof, more particularly when it was not a dispute of inheritance with regard to estate of Surjit Kaur, between the parties. The defendants are certainly not claiming any title to the suit property, either by natural succession

or through testamentary succession through Surjit Kaur. As observed earlier they had no right and concern with the suit property and they are just trespassers.

One more argument advanced by learned counsel for the appellants that mutation does not confer title, it is just for fiscal purposes to complete the record. However, this argument of learned counsel for the appellants is not of much relevance to this case since mutation is made of transfer of ownership. Its value cannot be ignored simply by saying that its only for fiscal purpose. The defendants are nobody to object to sanctioning of mutation in favour of the plaintiff since they themselves are not claiming any ownership rights in the suit land.

The appeal is absolutely without any merit. The judgments passed by the Courts below are well reasoned, based on proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for any interference by this Court. No substantial question of law also arise in the present appeal.

Therefore, the appeal is found to be without any merit and the same stands dismissed.

8.7.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No