

Regular Second Appeal No.5092 of 2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5092 of 2017 (O&M)

Date of Decision: January 30, 2019

Bhira Singh & another

...Appellants

Versus

Bhim Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. S.K.Liberhan, Advocate,
for the appellants.

AMIT RAWAL, J.

CM No.17759-C of 2018

For the reasons mentioned in the application, which is supported by an affidavit, the order dated 15.11.2018 dismissing the appeal for non-prosecution is recalled and the appeal is restored to its original number.

CM stands disposed of.

CM Nos.13532-C & 13533-C of 2017

For the reasons mentioned in the applications, which are supported by affidavits, delay of 288 days in re-filing and 3 days in filing the appeal is condoned.

Applications stand disposed of.

RSA No.5092 of 2017

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby the suit of the respondent-plaintiff for permanent injunction for forcible interference and dispossession has

Regular Second Appeal No.5092 of 2017 (O&M)

been decreed by the trial Court and affirmed in appeal.

Plaintiff asserted that the Government in the year 1972, vide mutation No.2511, allotted land measuring 0 kanals 11 marlas to defendant No.1. Defendant Nos.2 to 4 are the sons of defendant No.1. In the year 1993, there was a family settlement as the portion shown red in the site plan annexed with the plaint was allotted to plaintiff and remaining three portions were allotted to defendant Nos.2 to 4, who were none else but the sons of defendant No.1. Thereafter, both the parties have constructed their respective houses and had been in possession thereof.

On 05.03.2008, defendants in collusion with each other came to the spot with deadly weapons and threatened to forcibly dispossess the plaintiff and, therefore, the suit was filed.

The defendants, by filing the joint written statement, opposed the suit and denied the factum of family settlement. Rather, it was stated that defendant No.1 disowned the plaintiff from his property and in this regard a news item was published in the newspaper.

On receipt of the replication, the trial court framed the following issues:-

- “1) Whether by virtue of family settlement, the suit land came to the share of plaintiff and defendants no.2 to 4 as claimed? OPP*
- 2) Whether the plaintiff is entitled to restrain the defendants from dispossessing the plaintiff from the portion shown in red colour in the site plan attached with the plaint as claimed? OPP*
- 3) Whether the defendant no.1 had executed registered Will dated 22.4.2008 qua the suit land and other property in favour of defendants no.2 to 4? OPD*
- 4) Whether the suit of the plaintiff is not maintainable?*

Regular Second Appeal No.5092 of 2017 (O&M)

OPD

5) *Relief.”*

Plaintiff, in support of the evidence, examined three witnesses and brought on record the Local Commissioner's report Ex.P1, notice to the counsel prepared by the Local Commissioner Ex.P2, rough site plan, photographs, jamabandi for the year 2003-04 Ex.P10 and mutation No.2511 Ex.P13. On the other hand, the defendants examined four witnesses and tendered into evidence Ex.D1 to Ex.D9 including the khasra girdawaries.

Mr. S.K.Liberhan, learned counsel appearing on behalf of the appellant-defendants submitted that the judgments and decrees of the courts below are not sustainable in the eyes of law as DW-5 admitted that the plaintiff was residing outside the village and in the absence of declaration, injunction could not have been granted. On the other hand, defendant Nos.2 to 4 have proved their exclusive possession over the suit property, much less registered Will dated 22.04.2008 executed by defendant No.1. Will Ex.D1 remained unchallenged. The will has been proved through the testimony of Deed Writer DW-3, attesting witness Jiya Lal DW-2 and Registration Clerk DW-1. In other words, it was submitted that the plaintiff since failed to prove his possession, injunction could not have been granted.

I have heard the learned counsel for the appellant-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, the title in the aforementioned property in an injunction suit cannot be established, for, the Court was assigned a task to examine respective documents and pleadings with regard to the possession or otherwise. Jiya Lal DW-2, in his testimony, deposed that the land belonging to Bhim Singh was lying vacant.

No evidence has been placed on record to establish that the

Regular Second Appeal No.5092 of 2017 (O&M)

construction was raised by their mother. In fact, it has been proved on record that defendant No.1 (since deceased) during his life time, partitioned the land measuring 11 marlas in the year 1993 and disbursed the same to all his sons and in such circumstances, the plaintiff has proved on record his possession.

DW-4 did not clearly admit in his cross-examination that the house was built by Bhim Singh plaintiff in the land allotted to his father, thus, for all intents and purposes the property shown red in the site plan Ex.PW3/A was not only actual but in possession of the plaintiff. The injunction, in such circumstances, granted is most innocuous.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

January 30, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No