

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

RSA No.953 of 2019
Decided on:08.05.2019

Om Parkash

.....Appellant

versus

Veer Bhan and others

....Respondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.Kunal Dawar, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral Judgment)

Being aggrieved by the Judgement and decree dated 10.09.2018 rendered by the Additional District Judge, Faridabad, in Civil Appeal 169 of 2015/RBT-213 of 2017 by which the First Appellate Court has affirmed the Judgment and Decree passed by the Civil Judge (Jr.Divn.), Faridabad, dated 08.10.2015 in Case No.RBT 294/17.11.2011/01.11.2013, the defendant/appellant has preferred present Regular Second Appeal.

1. The plaintiff filed a suit for possession with respect to the suit property, i.e., shop measuring 16.42 square yards, fully described in the plaint.

The plaintiff claimed that his father Chela Ram had obtained the aforesaid shop on allotment by the Faridabad Complex Administration in the year 1978 and actual physical vacant possession of the suit property was handed over on 09.09.1981 on deposit of entire sale consideration of Rs.587.85. The aforesaid Chela Ram raised construction over the suit property. The suit property was adjoining the house of defendants who took

possession of the suit property in the July, 1983 by forcibly dispossessing the father of the plaintiff by opening door towards southern side of their house. Defendant no.1-Santwanti and her husband Jodha Ram instituted a suit of permanent injunction against Chela Ram bearing No.R-237/83 of 13.07.1983 (Smt.Satwanti vs. Chela Ram) which was disposed of vide Judgement and decree dated 24.05.1985 by the Court concerned. However, being aggrieved by the Judgement and decree, his father Chela Ram preferred an appeal bearing No.80/13 dated 31.05.1985 which was dismissed on 09.11.1985. The Regular Second Appeal before the High Court bearing RSA No.3338 of 1985 was decided vide Judgement dated 19.11.2003. Against the aforesaid Judgement the defendant no.1 Santwanti filed Appeal No.5194 of 2006 before the Hon'ble Supreme Court but the same was dismissed in default and the interim order was also vacated. During the pendency of the Regular Second Appeal before the High Court, aforesaid Chela Ram died and his legal representatives namely, Kunti Bai, Khem Chand and Veer Bhan were brought on record. However, since Kunti Bai and Khem Chand also have died so the present suit was instituted by Veer Bhan only.

2. On summons being issued defendants appeared and contested the claim by filing the joint written statement submitting that the plaintiff was neither the owner nor was in possession of the suit property. Its possession was never handed over by the Municipal Committee, Faridabad, to Chela Ram and no construction had been raised by him. It is averred that defendant no.1 and her husband Jodha Ram were actually the owners and in possession of the suit property which was allotted by the Municipal Committee on 14.03.1969 against payment of Rs.250/-. It is also averred

that defendant no.1 approached the Municipal Committee for allotment of the remaining portion of the plot, i.e. 95.37 square yards which was also in the possession of the defendants which was eventually allotted in her favour. Thus, she came into possession of entire 120 square yards area alongwith the suit property in year 1971-72. Thereafter, sewerage charges and tax charges were being paid by Jodha Ram, i.e. the husband of defendant no.1. The electricity connection was also installed in the premises in the year 1988 in the name of defendants and as such, there was no question of possession of father of the plaintiff over the suit property. It has finally been stated that the suit has been filed only with intention to grab the suit property without having any right, title and interest by digging side walls of the house of the defendants on 07.02.1983 and the suit for permanent injunction was filed by the defendants against Chela Ram which was decreed and appeal preferred therefrom was also dismissed. The defendants had clarified that the aforesaid suit was not for declaration of title on the property, but it was a simple suit for permanent injunction. Even it is not clear from the Judgment of the High Court that there was any evidence to the effect that the father of the plaintiff was dispossessed after filing of the suit.

3. The Trial Court, on appreciation of rival pleadings framed following issues:

1. Whether plaintiff is entitled to a decree for possession, as prayed for?OPP
2. Whether plaintiff as well as his father was neither owner and nor in possession of the suit property?OPD
3. Whether originally the defendant no.1 and her husband Jodha Ram was owner and in possession of the suit property?OPD
4. Whether the suit of the plaintiff is not maintainable in the present form?OPD

5. Whether the plaintiff has no locus standi to file the present suit?OPD
 6. Whether the suit has not been properly valued for the purpose of Court fee?OPD
 7. Relief.
4. While deciding the issues no. 1 to 3 together, as they were interconnected and interdependent, the trial Court has held after consideration of material records that the issue with respect to ownership is no longer *res integra* in as much as the same having been decided by the High Court in RSA No.3338 of 1985 in following terms:

“The evidence of the defendant shows that a sum of Rs.587.85 had been deposited by the defendant on 09.09.1981 in respect of costs of Nazool plot measuring 16.42 square yards. It is the said area which is in dispute. Plaintiffs have approached the Court with the plea that they have purchased the property from Faridabad Complex Administration. However, it is the defendant who has led evidence regarding purchase of Nazool plot measuring 16.42 square yards from the Faridabad Complex Administration. This fact is sufficient to hold that the Faridabad Complex Administration has sold the property measuring 16.42 square yards to the defendant. The building plan has been sanctioned by the Faridabad Complex Administration.

In view of the above, the finding recorded by the first appellate court on issue No.1 is set aside and it is held that the plaintiffs have failed to prove the ownership in respect of the disputed property in the suit, which was allotted to the defendant.

As regards second question of possession, plaintiffs have alleged that they are in possession since 1968. On the other hand, defendant has admitted the possession of the plaintiffs though stated that the defendant has been dispossessed after filing of the suit. There is no evidence to the effect that the defendant has been dispossessed after filing of the suit. In the absence of any evidence, plaintiffs are entitled to protect their possession against forcible dispossession by the defendant. The defendant is at liberty to seek possession by filing a separate suit.

In view of the findings recorded above, the appeal is partly accepted. The finding of the first appellate court on the issue of ownership of the plaintiffs is set aside. The judgment and decree passed by the learned trial court is restored.

Appeal stands disposed of accordingly.”

(emphasis is mine)

It is apparent from the above that the High Court had clearly returned a finding that the suit property was sold by Faridabad Complex Administration to Chela Ram, i.e. father of the plaintiff, therefore there is no doubt that the ownership of the suit property has been declared in favour of Chela Ram.

5. A point was raised before the Court that although such finding has been recorded by the High Court, the suit being simpliciter for the relief of permanent injunction, there should not be any finding recorded with respect to the rights of the defendants. However, the trial Court has noticed that the Judgment and decree dated 24.05.1985 passed in Civil Suit No.R-237/83 dated 13.07.1983 reveals that issue no.1 was “Whether the plaintiffs are owners and in possession of premises in dispute shown by letters ABCD in the site plan attached?OPP.”

Accordingly, It has been held that since the issue of ownership has been dealt with as a separate issue alongwith possession in a suit for permanent injunction, the findings returned by the High Court as per the ownership would be binding upon the rights of the defendants. It has further been held that the possession shall follow only the ownership and the plaintiff being the owner of the suit property being legal heir of Chela Ram, would be entitled for possession of the same.

The defendants/appellant preferred Civil Appeal No.CA-682-2015, before the Additional District Judge, Faridabad, however, the First Appellate Court has also affirmed the findings recorded by the trial Court and dismissed the appeal. Hence this appeal.

6. In the background of the aforesaid factual matrix, I have heard

learned counsel for the appellant.

Learned counsel has submitted that there is no evidence at all having been led by the plaintiff with respect to their title or possession over the 16.42 square yards which is the suit property. He next contends that in a suit for permanent injunction, even if a finding has been recorded by the High Court that the suit property was sold to the father of the plaintiff, viz., Chela Ram by the Faridabad Complex Administration, that would not be binding upon the rights of the defendant/appellant. It is further contended that, even if it is assumed the plaintiff was dispossessed during the pendency of the suit in the year 1983, the filing of their suit for recovery of possession would be barred by the law of limitation.

7. The aforesaid submissions made on behalf of the appellant, *prima facie*, appears to be attractive but on deeper scrutiny are not found tenable for the following reasons:

As has been noticed by the trial Court, in the earlier round of litigation, suit was filed by the defendants/appellant in the year 1983 for permanent injunction. One of issues framed was-“Whether the plaintiffs are owners and in possession of premises in dispute shown by letters ABCD in the site plan attached?OPP.” Once issue has been framed and finding has been returned on contest then the finding recorded finally by the High Court in that regard, in my considered opinion, would be binding upon the parties and the ground that there is no evidence in that regard would not be available to the defendants/appellant as it has to be presumed that such finding has been recorded by the Court after appreciation of materials available on record.

Much emphasis has been given on the point of limitation. It is

contended that even if it is presumed that the plaintiff was dispossessed in the year 1983, their suit for possession would be barred by the law of limitation. Though the First Appellate Court has noticed that, with respect to title, the Civil Court has observed that, “without speaking on title of either of the parties, the defendants be restrained from digging the side wall of the plaintiff and from taking possible forcible possession of the house,” whereas the First Appellate Court, in the earlier proceeding, answered the issue regarding the ownership in favour of the then plaintiff, i.e. the present appellant/defendant herein. However, in the Regular Second Appeal no.3338 of 1985, the High Court had made following observations:

“That there is no evidence to the effect that defendant has been dispossessed after filing of suit. In the absence of any evidence, the plaintiffs are entitled to protect their possession against forcible dispossession by the defendant. The defendant is at liberty to seek possession by filing a separate suit”

8. In the aforesaid background, it can be understood that the case of the defendants in earlier proceeding, i.e., plaintiff of the present suit, of dispossession from the suit property during the pendency of the suit was disbelieved by the High Court and therefore, the plaintiff was held to be entitled for protection against forcible dispossession by the defendants but the defendants were granted liberty to seek possession by filing a separate suit as they were found title holder of the property in dispute, therefore, in my considered opinion, since the story of dispossession during the pendency of suit, as propounded by the defendant of the earlier suit, i.e. the plaintiff of the present suit, was disbelieved finally by the High Court, no cause of action would arise from that date rather the same would only arise from the date when the High Court had granted liberty to the defendant (present

plaintiff) to seek possession by filing a separate suit.

9. Having observed so, it has to be observed now that the suit cannot not held to be barred by the provisions of law of limitation and, the defendant/appellant has rightly neither raised this issue specifically in their pleading nor was such issue framed by the trial Court in the concerned suit. This issue was not raised by the defendants/appellant before the First Appellate Court also as the same has first time been raised before this Court which has been answered as above.

In the result, in my view, the appellant/defendant has not been able to raise any ground or substantial question of law warranting interference into the impugned Judgments and decrees.

Accordingly, the Regular Second Appeal is dismissed.

May 08, 2019
dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes