

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

CM No. 19484 C of 2018 in/and
RSA No. 14361 of 2018 (O&M)
Date of decision: 7.3.2019

Gopal Singh

...Appellant

Versus

Sukhwant Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Manjit Saini, Advocate,
for the appellant.

Mr. Maninder Singh Bajwa, Advocate,
for the respondents/caveator.

JAISHREE THAKUR, J.

CM No. 19484 C of 2018

This is an application that has been filed for condonation of 48 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

Main case

The appellant herein is aggrieved against the judgment and decree dated 5.9.2016 passed by the Civil Judge (Senior Division), Ajnala as well as the judgment and decree passed by the Additional District Judge, Amritsar, allowing the civil suit filed by the respondent/plaintiff in toto.

In brief, the facts are that the plaintiff/respondent ('the plaintiff for short), filed a suit for permanent injunction restraining the defendants/appellant from interfering in his peaceful possession over the suit land described in head note of the plaint. It was alleged that previously, the Punjab Government was owner of the suit land and the plaintiff was in possession over the same. On the basis of the possession, the suit land was transferred in favour of the plaintiff by the Punjab Government by way of Conveyance Deed dated 11.6.1999 and mutation was also sanctioned in his favour being in actual physical and cultivating possession of the suit land. The plaintiff had sown paddy crop over the same. The defendants/appellant were threatening to dispossess him forcibly, which gave rise to the filing of the instant suit.

Pursuant to the notice issued, the defendants put in appearance and filed a joint written statement taking a preliminary objection that the suit was not maintainable as the plaintiff was in not possession of even an inch of the suit land. It was contended that the plaintiff has filed the instant suit on the basis of wrong entries, which have already been challenged by the appellant by way of filling an application for correction of Khasra Girdawari before the Assistant Collector IInd Grade, Ajnala. It was also submitted that a separate petition under Section 10 of the Punjab Property Package Deals Act has been filed by the appellant for setting aside the conveyance deed executed in favour of the plaintiff/respondent. On merit, the possession of the plaintiff over the suit land was denied. It was further contended that the suit property in fact was owned by the Government of Punjab and that the appellant was cultivating the same as occupant tenant

under the the Punjab Government.

On the basis of the pleadings of the parties, the following issues were framed:

1. *Whether plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP*
2. *Whether the present suit is maintainable? OPP*
3. *Whether plaintiff has got locus standi and cause of action to file the present suit? OPP*
4. *Whether plaintiff has suppressed the material facts from the notice of this Court? OPD*
5. *Whether this Court has got no jurisdiction to entertain and try the present suit as per the provisions of the Punjab Property Package Deals Act? OPD*
6. *Whether defendant No.1 is in cultivating possession of the suit land as occupant tenant under the Punjab Government but the entries are wrongly coming in the name of the plaintiff? OPD*
7. *Relief.*

Both the parties led evidence and the plaintiff in order to prove his case examined himself as PW3, PW1 Satpal Singh, PW2 Bira Singh and closed the oral evidence. Reliance was placed upon copy of the jamabandi for the year 2011-12, Ex. P1, Khasra Girdawari from Sauni 2005 to Hari 2014 Ex.P2, copy of the order dated 25.8.2014 Ex. P.3 and Photocopy of Conveyance Deed dated 11.6.199 Mark X. Whereas, on the other hand, defendant No.1 examined himself as DW1, DW2 Gurmukh Singh and

closed their evidence. Further they exhibited certified copy of the petition under Section 10 of the Punjab Property Package Deal Act Ex. D1, copy of application dated 8.4.2016 Ex. D2, report of Halqa Patwari Ex. D3, copy of jamabandi for the year 2011-2012 Ex. D4.

The trial court on appreciation of the evidence led by the respective parties, partly allowed the suit and restrained the appellant from interfering into peaceful possession of the plaintiff over land bearing Khasra No. 15//24/1 (3-0). However, it held that since the plaintiff has failed to prove on record by way of leading documentary evidence that he is also in possession of the suit land bearing Khasra No. 15//21/1/2 (6-0), as such he is not entitled to the relief of injunction qua that land.

Aggrieved against partial judgment and decree, the plaintiff filed an appeal before the first Appellate Court, who allowed the same and restrained the appellant/defendant from interfering into peaceful possession of the plaintiff over the entire land as mentioned in the head note. Aggrieved against the said judgment and decree, the instant appeal has been preferred.

Learned counsel appearing on behalf of the appellant assails the judgment and decree on the ground that the plaintiff/respondent is not in possession of the suit land. The plaintiff filed the suit on the basis of the wrong entries in the revenue record and the appellant has already filed an application for correction of the Khasra Girdawari before the Assistant Collector IInd Grade, Ajnala and he has also filed a separate petition under Section 10 of the Punjab Property Package Deals Act for setting aside the conveyance deed executed in favour of the plaintiff/respondent. On the contrary, the possession of the suit land is with the appellant and as such

suit for permanent injunction could not have been allowed.

Per contra, learned counsel appearing on behalf of the caveator/plaintiff contends that the respondent/plaintiff is in fact in possession of the entire land as mentioned as head note of the plaint and he cannot be evicted without following due process of law. It is argued that the plaintiff has got executed Conveyance Deed on the basis of his possession and no fault at all can be found with the findings recorded by the courts below while decreeing the suit in favour of the plaintiff/respondent.

I have heard respective submissions made on behalf of the learned counsel for the parties and have also gone through the pleadings and the evidence available.

At the outset, it is noted that the appellant herein did not choose to challenge the finding of the trial court regarding possession of the plaintiff over land measuring 3 kanals in Khasra No. 15//24/1 and thereby that finding has already attained finality. The trial court non-suited the plaintiff/respondent with regard to 6 kanals of land bearing Khasra No. 15//21/1/2 on the ground that this khasra number was not mentioned in the revenue record Exs. P.1 and P2. The first Appellate Court, on appreciation of the evidence, came to hold that there was an oversight and typographical error as the property claimed to be in possession of the plaintiff is in Khasra No. 21//1/2 (6-0) as area of the property comprised in Khasra number and Khata Khatauni of this property are the same as mentioned against Khasra No. 21//1/2. By taking into account the evidence of Satpal Singh (PW1) and Bira Singh (PW2), who are co-villagers, who supported the case of the plaintiff/respondent, the appeal was allowed and the suit of the plaintiff was

decreed in toto with costs.

A reading of the impugned judgment passed by the first Appellate Court clearly shows that the first Appellate Court has appreciated the documentary as well as oral evidence on record and the pleadings of the plaintiff/respondent in correct perspective and no fault could be found in the same. The appellant herein himself has challenged the entries made in the revenue record by filing an application for correction of Khasra Girdwari before the Assistant Collector IInd Grade, Ajnala and has also filed a separate suit under Section 10 of the Punjab Package Deals Act for setting aside the alleged conveyance deed. From these facts itself, an inference can be drawn that the appellant is not in possession of the suit land. From the narration of the facts revealed above, it is clear that the appellant has not been able to establish his ownership or possession over the suit land, therefore, the first Appellate Court rightly decreed the suit of the plaintiff in toto. Needless to mention that the appellant would be entitled to recover the possession of the suit property in accordance with law once he is able to prove his ownership in the proceedings initiated by him. No substantial question of law arises for consideration in this second appeal.

Consequently, the Regular Second Appeal is dismissed.

7.3.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No