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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5475 of 2018 (O&M)

Date of Decision: 16.07.2019

Premo

..... Appellant

versus

Sanjeev and others

..... Respondents

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

Present: Mr. Chander Pal Tiwana, Advocate
for the appellant.

Mr. Surender Dhull, Advocate
for respondent No.1.

DR. RAVI RANJAN J. (Oral Judgment)

I have heard learned counsel for the defendant-appellant as well as plaintiff-respondent No.1.

2. This appeal is directed against the judgment and decree dated 05.04.2018 passed by the Additional District Judge, Kaithal in Civil Appeal No.74 of 2016, by which the findings and the decision of the trial Court dated 06.08.2016, passed in Civil Suit No.507 of 2012, dismissing the suit of the plaintiff-respondent No.1, has been reversed and the appeal had been allowed. Defendant No.1-Suba and defendant No.3-Premo i.e. the appellant in the present appeal, have been directed to hand over the possession of the suit property to the plaintiff-respondent No.1.

3. Short facts, which would be necessary for consideration of the *lis* between the parties stand enumerated as under:-

The plaintiff-respondent No.1 instituted a Civil Suit No.507 of 2012 seeking a decree for possession of *gair mumkin bara* measuring 0 kanal 03 marlas, comprised in khewat No.817/747, khatoni No.974, khasra No.206/24, situated within the revenue estate of village Bhana, Tehsil and District Kaithal, on the ground that the same was allotted to his father, namely, Late Basau Ram vide resolution No.2 by the Gram Panchayat, Bhana dated 21.07.1976 as per the instructions of the Haryana Government and the registered allotment letter was issued in his favour on 31.07.1976. The aforesaid Basau Ram passed away on 21.09.2012 and thereafter, the plaintiff-respondent No.1 along with his brothers and sisters became the owner in possession of the suit property being his class-I legal heirs.

It is further averred in the plaint that when the Gram Panchayat tried to dispossess the plaintiff-respondent No.1 from the suit property by raising a wall encircling the Cremation Ground forcibly and illegally over the suit property, the plaintiff filed a suit for permanent injunction against the Gram Panchayat, Bhana. However, during the pendency of the suit, the suit property was encroached by the defendants by filling the same with earth.

Upon instructions of the Court, the Naib Tehsildar, Pundri demarcated the land and found defendants No.1 and 3 in illegal possession over the suit property. In the meantime, the Gram Panchayat, Bhana filed a statement before the Court by stating that they do not intend to raise such boundary wall over the suit property and on such instructions being issued, the plaintiff-respondent No.1 withdrew the suit.

The plaintiff-respondent No.1 requested the defendants to hand over the vacant possession of the suit land but that proved in vain. Hence, the suit was filed.

4. The appellant-defendant No.3 appeared and filed the written statement by refuting the allegations made in the suit. It is stated that father of the plaintiff-respondent No.1 never remained in possession of Khasra No.206/24 and he had already violated the terms and conditions of the allotment letter dated 31.07.1976 as he as well as the plaintiff could not construct any house over the suit property even after 37 years of allotment. So the plaintiff has no right to claim the ownership and possession of the *bara* in dispute and the Gram Panchayat, Bhana is the actual owner of the suit property, which has not been impleaded as a party.

So far as her case is concerned, she has stated that she is in lawful and peaceful possession of the said *bara* for the last 40 years and has raised the boundary walls and planted the trees and using the same for tethering the cattles and storage of dung cakes. However, the answering defendant has clearly stated in paragraph No.6 of the written statement, which stands recorded in the order of the trial Court dated 21.12.2012, that she is not in possession of any part of Khasra No.206/24. This statement made in the written statement of defendant No.3 is contrary to her entire case that she is in possession of the suit property.

5. The trial Court, on appreciation of pleadings of the rival parties, framed the following issues:-

- “1. Whether the plaintiff is entitled to decree for possession directing the defendants to hand over the vacant possession of the suit land?
OPP

2. Whether the plaintiff has concealed the true and material fact from the Court? OPD
3. Whether the suit is not maintainable? OPD
4. Whether the suit of the plaintiff is hopelessly time barred? OPD
5. Whether the plaintiff has no locus-standi or cause of action to file the present suit? OPD.
6. Whether the suit is bad for non joinder and mis-joinder of necessary parties? OPD.
7. Relief.”

6. Issue Nos.1 and 2 being intertwined, were taken up together for consideration by the trial Court which, after scrutiny and analysis of the materials on the record, has returned the findings on issues in favour of the defendant holding that plaintiff is not entitled for relief in view of his conduct that he first filed the suit against the Gram Panchayat and the same was subsequently withdrawn admitting his possession over the Khasra No.206/24 stating that there is no threat from the defendants. At the same time, he again filed a suit seeking possession of the same property stating that the defendants are in possession of the same.

7. In my view, such findings are recorded by the trial Court suffered from gross error for the reason that the findings have been recorded completely ignoring or fragmenting the vital fact that, in the earlier suit, the defendants were not the same. Actually the Gram Panchayat was the defendant and the suit was filed against the Gram Panchayat seeking relief of permanent injunction as the plaintiff was apprehending that, for encircling the Cremation Ground, the Gram Panchayat was trying to encroached upon the Khasra No.206/24, which is owned by the plaintiff. But in that case, the Gram Panchayat filed their reply that they are not intending to do so. That had led the plaintiff to

withdraw the suit. However, at the same time, the Naib Tehsildar, Pundri was directed to demarcate the suit property. He, after doing that, had filed a report, which is on record as Exhibit PW-2/B, in which he has stated that the suit property is in possession of the defendant.

In such a situation and under such circumstance, one would wonder as to what was the legal option or remedy available to the plaintiff other than filing of a suit for recovery of possession of the land from the defendants.

Thus, not-suiting the plaintiff on the aforesaid ground was totally uncalled for. The First Appellate Court has rightly held that defendant No.3 is contesting the suit has not at all been able to produce any document or cogent evidence to prove her ownership over the land. The only ground, which was raised seriously and which has been done at the time of hearing of this appeal also by the learned counsel for the appellant that once the construction was not made within a period of one year as per the terms and conditions given in the allotment letter issued by the Gram Panchayat in favour of the plaintiff, the plaintiff cannot be held to be the owner of the suit property. However, after considering the allotment letter, which is Exhibit No.PW-3/A, the First Appellate Court has opined that the terms and conditions are that in case of violation of the same, the Gram Panchayat would have a right to recover the property which has not been done by the Gram Panchayat. Unless and until such action is taken, it cannot be held that the plaintiff automatically ceased to be owner of the property. Even after that what would be the right of defendant No.3? She could have questioned the same only if she would

have been able to produce cogent evidence with respect to her ownership over the suit property but that could not be done.

There was no case at all for her to contest specifically when the defendant No.1, who was also found in part possession of the suit property along with defendant No.2 in the earlier suit and who had appeared before the Court and stated that they did not have any concern with the suit property and further that neither they are in possession nor would they try for same.

8. Above all, in her written statement itself, as has been recorded above, the defendant No.3 has categorically stated as under:-

“The defendant No.3 is not in possession of any part of khasra No.206/24 rather she is in possession of her own bara for the lastly 40 years.”

It is, thus, clear that it is not even the case of defendant No.3 that the disputed land of Khasra No.206/24 in any manner concerns her as she has categorically stated that she is not in possession of any part thereof rather she is in possession of her own *bara* i.e. the different land for about 40 years, of which the plaintiff has no concern at all.

9. Giving anxious consideration to the aforesaid factual matrix and materials available on record as well the findings recorded by both the Courts below and submissions made by learned counsel for the appellant and respondent No.1, I am of the opinion that the appellant has not been able to raise any good ground or substantial question of law warranting interference in the judgment and decree passed by the First Appellate Court.

In the result this appeal, being devoid of any merit, is dismissed.

July 16, 2019
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(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No