

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 123 of 2019 (O&M)

Date of Decision: 19.02.2020

Yad Ram and Others

... Appellant(s)

Versus

Pankaj Swami and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Mukesh Rao, Advocate
for the appellants.

Anil Kshetarpal, J.

The defendant No.1/appellant along with plaintiffs No.2(b) & 2(c) have filed the present regular second appeal challenging the correctness of judgement passed by the learned first Appellate Court dated 24.07.2018. The jurisdiction of this Court, while dealing with regular second appeals, is regulated by Section 41 of the Punjab Courts Act, 1918, which reads as under:

“41. Second appeals—(1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :

- (a) the decision being contrary to law or to some custom or usage having the force of law.*
- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law.*
- (c) a substantial error or defect in the procedure provided by*

the Code of Civil Procedure 1908 (V of 1908), or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits.

Explanation—A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of this section.

(2) An appeal may lie under this section from an appellate decree passed ex parte”.

The plaintiffs filed a suit with following prayers:

“A. *That a decree for permanent injunction regarding the suit land mentioned in Para No. 1 of the plaint and as shown in red colour in the site plan annexed with the plaint marked by letters CHIJ to this effect that the defendants be permanently restrained not to dispossess the plaintiffs from the suit land and further not to raise any type of construction over the disputed plot may kindly be passed in favour of the plaintiffs and against the defendants.*

B. *In case the defendants succeeds in dispossessing the plaintiffs from the suit land or succeeds in raising construction over the suit land a decree for possession by way of mandatory injunction may kindly be passed in favour of the plaintiffs and against the defendants and further decree for mandatory injunction to close the door*

mentioned in para no. 4 of the plaint may kindly be granted.

C. Cost of the suit may also be granted.

D. Any other relief which the Hon'ble court deem, fit and proper may also be granted”.

The plaintiffs had claimed that their grandfather Laxminarayan had purchased the property in dispute along with the adjoining property vide registered sale deed dated 07.11.1956 from Smt. Nimbo Devi. After the death of Laxminarayan, the plaintiffs are his natural heirs. Plaintiff No.1 claims that he is ordinary resident of Delhi on account of his occupation, whereas the property is situated in Rewari. The defendants, taking advantage of his absence, have encroached upon not only the street but also some part of the plot. It is further pleaded that previously also, some area was encroached upon by the defendants. However, father of the plaintiffs agreed to relinquish his rights on that plot in order to maintain peace. Now the defendants are once again trying to encroach upon further area.

The defendants contested the suit and took a stand that the sale deed dated 07.11.1956 is illegal, null and void and in fact a paper transaction. The defendants claimed that the suit property is in their possession and they have installed a fodder cutting machine and wanted to raise construction when the plaintiff filed a suit.

The learned trial Court dismissed the suit by recording strange reasons. It was held that the sale deed dated 07.11.1956 has not been proved because the sale deed is in Urdu language and the person, who translated it in Hindi, has not been examined.

The learned first Appellate Court, on re-appreciation of evidence, found that the plaintiffs have successfully proved their case. The Court found that the sale deed, which is more than 30 years old, stands proved. The Court further found that since it is a vacant piece of land, therefore, the possession thereof goes with its owners.

This Court has heard learned counsel for the appellants at length and with his able assistance, gone through the judgements passed by both the Courts below and the record.

Learned counsel appearing for the appellants has submitted that the learned first Appellate Court has recorded a finding that the plaintiffs are owners, although no distinct issue was framed on the question of ownership by the Courts below. He further submitted that from the reading of the statement of the plaintiff, it is apparent that the defendants are in possession and therefore, the learned first Appellate Court has erred in reversing the judgement passed by the learned trial Court.

On critical analysis of the arguments of learned counsel for the appellants, this Court has come to a conclusion that there is no merit in the present appeal. First of all, the defendants have claimed that the property is their ancestral property, however, no document in this regard has been produced. Further, on careful perusal of the sale deed dated 07.11.1956, registered on 08.11.1956 proves that the property purchased was bounded by streets on all the four directions. Along with the sale deed, a layout plan of the property purchased is attached. Now, on careful examination of the layout plan which has been produced by the plaintiffs while filing the suit, it is apparent that the defendants have already encroached upon some part of

the property, which according to the plaintiff, was relinquished in order to maintain peace. However, now the defendants are trying to not only encroach upon further piece of land, but even the street is also sought to be encroached upon. The property of Yad Ram, defendant, is located towards north of the plot in dispute. As per the layout plan attached with the sale deed towards north side of the property purchased, there is a public passage. The property of Yad Ram, defendant, is after the aforesaid passage. Thus, it is apparent that the defendants are trying to not only encroach upon some part of the property purchased by the predecessors of the plaintiff but also the street.

Further, it is well settled that presumption of possession of land is in favour of the owners. With respect to vacant piece of land, possession follows title. Still further, the defendants have failed to prove any construction over the property. The defendant, when appeared in evidence, admitted that when he had dig out foundation, the plaintiff filed a suit and thereafter, the work was stopped. The plaintiffs, in any case, have also sought relief of possession.

Still further, the learned first Appellate Court has re-appreciated the evidence and come to a conclusion. This Court, while exercising the jurisdiction under Section 41 of the Act can interfere only if the learned counsel fulfils the parameters laid down therein.

Now let us examine the arguments of learned counsel for the appellants. No doubt, there is no distinct issue on the title but careful reading of the judgement passed by the learned first Appellate Court, it is apparent that the finding on the ownership is only for the purpose of

deciding the present suit. Such finding is only incidental.

As regards, next argument of learned counsel for the appellants that from reading of the statement of plaintiff, it is established that the defendants are in possession, it will be noticed that the plaintiff has stated that since he is residing in Delhi, therefore, when he came to know about the attempt of the defendants to take over the possession, he immediately filed the suit. Defendant No.1, while appearing in Court, has admitted that he has stopped construction, which he was intending to raise.

This act itself is not sufficient to prove possession so as to decline the relief to the plaintiffs, who are owners.

Keeping in view the aforesaid facts, there is no ground to interfere.

Dismissed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 19, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No