

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

RSA No.208 of 1990

Date of decision: 14th February, 2020

Ujagar Ram (deceased) through LRs

... Appellants

Versus

Tarsem Lal & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Viney Saini, Advocate for the appellants.

Mr. Onkar Rai, Advocate for the respondents.

FATEH DEEP SINGH, J.

Then plaintiff Ujagar Ram (now appellant) instituted against the defendants Tarsem Lal, Gurprem and Sodhi Ram, all siblings sons of Rattan Chand (now respondents) a suit for possession of property bearing khasra Nos.252 (0-1) and 251 (0-4) detailed in the head note of the plaint. The precise allegations as per the plaintiff were that he was the owner in possession of the suit property and threatened over the acts of the defendants to take illegal and forcible possession of the same, initially filed a suit for permanent injunction and when he was dispossessed on 19.06.1985 during the pendency of the suit, sought decree for possession.

The stand of the defendants in unison after the amendment of the pleadings is to the effect that the defendants were in possession of the property in question and the plaintiff has no concern with the same as

khasra No.251 has been purchased by the plaintiff and earlier suit of the plaintiff stood dismissed. It is claimed by the defendants that they are owner in possession of their own land over which they have raised construction and denied the averments of the plaintiff. After replication, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled for the possession of the suit property as prayed for? OPP
2. Whether the defendants have taken the possession of the property in dispute during the pendency of the suit, if so its effect? OPD
3. Whether the suit of the plaintiff is barred by res-judicata? OPD
4. Whether the plaintiff is estopped from filing the present suit? OPD
5. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD
6. Whether the site plan filed by the plaintiff is not correct? OPD
7. Relief.

The plaintiff himself appeared as PW-1 and sought support from PW-2 Karnail Singh s/o Ajit Singh and PW-3 Karnail Singh s/o

Jiwan Singh and proved registered sale deed dated 01.10.1974 Ex.P1, jamabandi for the year 1979-80 Ex.P2 and Ex.P3, khasra girdawari from 1980-81 to 1984-85 Ex.P4 and the compromise deed Ex.P5 and closed the evidence. Defendant No.1 Tarsem Lal on the other hand appeared as DW-1 and reiterated their case proving site plan Ex.D1, copies of mutation Nos.1599, 1600 and 1598 as Ex.D2, Ex.D3 and Ex.D4 respectively; copy of judgment dated 27.11.1980 Ex.D5 and copy of jamabandi for the year 1969-70 Ex.D6.

The Court of learned Sub Judge 1st Class, Jullundur by way of judgment and decree dated 18.08.1987 passed a decree for possession of the land in dispute in favour of the plaintiff and against the defendants. In appeal by the unsuccessful defendants, the Court of learned Additional District Judge, Jullundur through impugned findings dated 01.09.1989 allowed the appeal reversing the findings of the learned trial Court and thus dismissed with cost the suit of the plaintiff. That is how the parties are before this Court in this appeal.

In view of the recent pronouncement in '**Kirodi (since deceased) through his LR vs. Ram Parkash & others**' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the State of Punjab, that

there is no necessity of framing substantial question of law for disposal of an appeal.

Upon hearing Mr. Viney Saini, Advocate for the appellants; Mr. Onkar Rai, Advocate representing the respondents and perusal of the records.

From the brief arguments that have been addressed by the learned counsel for the two sides and as a crux of the records, the only contentious issue that arises in this appeal is whether the plaintiff was the owner of the suit property situated in the said khasra numbers or not. As has been the stand of the defendants in their pleadings and so in the arguments before this Court, they do not dispute the right of the plaintiff in the property denoted by khasra No.251 measuring 4 Marlas and which apparently as per the jamabandi Ex.D6 and Ex.P2 is reflected in the name of the plaintiff. Out of khasra No.252, the plaintiff is shown to be owner of 1 Marla which is reflected in the jamabandi Ex.P3 and is in possession as per the khasra girdawari Ex.P4 and which evidence has remained un-displaced. Undisputedly, the defendants too have purchased through sale deeds reflected in mutation Ex.D2 to Ex.D4, 1 Marla each from the same original owner from whom the plaintiff had purchased. It is there on the record and has remained unrefuted that khasra No.252 measures 4 Marlas and out of which, if we go by the sale deeds and mutations, 3 Marlas have been purchased by the defendants on 19.08.1974 and the

remaining 1 Marla has been purchased by the plaintiff on 07.10.1974 through sale deed Ex.P1, subsequent to the sale in favour of the defendants. The testimony of the defendant Tarsem Lal and so the admission by the plaintiff Ujagar Ram and so even the witness of the plaintiff Karnail Singh PW2 is to the effect that the defendants are only in occupation and residing in the dwelling unit constructed since the year 1974, and precisely goes to establish beyond any doubt that after purchase of this plot by them, they have raised their dwelling unit in the year 1974. It is the stand of the witness of the plaintiff Karnail Singh PW2 that Ujagar Ram plaintiff is residing in his own house separate from that of the defendants, is the most substantial aspect of the evidence that the property where the plaintiff is residing and where the defendants are residing, are quite distant. To the very specific query of the Court, none of the counsel could satisfactorily show from the evidence that there has been demarcation of the properties and the compromise before the Panchayat Ex.P5 made on 12.05.1985 is illustrative to that effect and therefore, shows that dispute is over khasra No.250 which the plaintiff claims to be his and there is counter-claim by the heirs of one Raja Ram and therefore, nothing sustains in the claim of the plaintiff qua the defendants. This important aspect of the documentary and oral evidence went unnoticed by the two courts below resulting in miscarriage of justice and the learned first appellate Court in the impugned findings

dated 01.09.1989 has rightly concluded it so. Learned counsel for the appellants could not convince how the impugned findings are inherently illegal and wrong interpretation of the evidence and the law. Finding no merit, the instant appeal stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 14, 2020
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No