

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

RSA-3289-2004 (O&M)

Date of decision : 17.03.2020

Dhan Singh (since deceased) through his legal heir

...Appellant

Versus

Suraj Bhan (since deceased) through his legal heirs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. C.B. Goel, Advocate and
Mr. Suresh K. Singla, Advocate for the appellant.

Mr. Sanjiv Pabbi, Advocate for respondent No.15.

Mr. Narender Singh, Advocate for respondent Nos.17 and 18.

ANIL KSHETARPAL, J.

Defendant No.1-appellant has filed the present Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while decreeing a suit for permanent prohibitory and mandatory injunction filed by the respondents-plaintiffs.

The parties would be referred to by their original status before the first Court (trial Court).

The plaintiffs filed the suit claiming that they are co-owners in possession of land detailed in the plaint. The plaintiffs claimed that they are proprietors of Pana Nasiyan and they are using the land for parking their tractor trolley and for other purposes. The plaintiffs also

claimed that they have constructed 10 pucca shops, 4 khokas, godown and a pucca house adjoining the suit land.

On the other hand, the defendants resisted the suit by filing separate written statements. Apart from usual objections, it was claimed that Sh. Tejpal son of Chander made an attempt to purchase the suit land from the actual owners namely Chander Mohan and Virender Mohan sons of Jagdish Rai but failed. A settlement was arrived at between the parties but later on it was rescinded on 15.07.1991. Defendant No.1 purchased the suit land from Chander Mohan and others vide registered agreement to sell dated 09.09.1991 and he is in possession of the property. It was claimed that the plaintiffs have encroached upon some part of shamlat land which is much more than their share. Thus, the defendants denied that the plaintiffs are owners of the property. It was claimed that Jagdish Rai had purchased the suit land from Hari Chand and Gordhan sons of Mahipat vide registered sale deed dated 03.06.1960 and the original vendor i.e. Hari Chand and Gordhan were proprietors of Pana Nasiyan/5 biswas. It was further alleged that Jagdish Rai constructed a pucca house in the year 1960 over the suit land and started living there. Defendant No.1 is in possession of the same since 1965 and as per the Municipal records, the house tax is assessed under Property Unit No.399, Ward No.15, Bahadurgarh.

On appreciation of pleadings, learned trial Court framed following issues:-

- “1. Whether the plaintiffs are owners in possession of the suit land, as alleged? OPP*
- 2. If issue No.1, is proved, then whether the plaintiffs are entitled for the relief of permanent injunction, as alleged? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the plaintiffs have no locus-standi to file the present suit? OPD*
- 5. Whether the plaintiffs have no cause of action? OPD*
- 6. Whether the suit is bad on account of Order 1 Rule 8 CPC? OPD*
- 7. Whether the suit has not been properly valued for the purposes of Court-fees and jurisdiction? OPD*
- 8. Whether the plaintiffs are estopped from filing the suit by their own acts and conduct? OPD*
- 9. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 10. Relief.”*

Both the parties were permitted to lead evidence and thereafter the learned trial Court as well as First Appellate Court decreed the suit filed by the plaintiffs and held that the plaintiffs are owners of the suit land and, therefore, a permanent prohibitory injunction was issued against the defendants from interfering in the possession of the plaintiffs. The Courts further issued mandatory injunction directing the defendants to remove encroachment over some part of the suit land and handover the possession thereof to the plaintiffs.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the

Courts below and the requisitioned record.

On the one hand, learned counsel for the defendant-appellant has submitted that the judgments passed by the Courts below are erroneous whereas on the other hand, learned counsel for the respondents has supported the judgments passed by the Courts below.

On critical analysis of the arguments of learned counsel for the parties, this Court is of the considered view that the judgments passed by both the Courts below cannot be sustained and the matter is required to be remitted back to the learned trial Court to re-decide the entire suit.

It may be noted here that in the revenue record i.e. various jamabandies produced on file prove that the property in dispute is entered in the revenue record as *shamlat pana nasiyan urf paanch biswa hasab rasad araji khewat*. In other words, the property is owned by a proprietary body of *pana nasiyan urf paanch biswa*. There is no entry, in the ownership column, recording the plaintiffs to be the owners of the property. The plaintiffs have produced no document to prove their title. Both the Courts have accepted the assertions of the plaintiffs that they are proprietors of the aforesaid shamlat pana. However, that itself is not sufficient. The words “*shamlat pana nasiyan urf paanch biswa*” depicts that it is a proprietary land of a particular pana. Before the plaintiffs could be declared owners of the property, the Court was required to determine what was the share of the plaintiffs particularly when defendant No.1 had specifically pleaded that the plaintiffs are claiming more than their entitlement.

Issue No.1 is with regard to ownership of the plaintiffs. It was not appropriate for the Courts below to grant declaration without determining what was the share of the plaintiffs, if there was any and whether the plaintiffs are claiming the property in accordance with their entitlement. However, both the Courts have failed to examine the case from this important aspect. Still further, before the First Appellate Court, an application for permission to lead additional evidence was filed by the defendants in order to produce copies of judgment and decree passed by the Courts in Civil Suit No.30 of 1990 filed by legal heirs of Jagdish Rai dated 02.04.1997 against which the appeal was also dismissed. It was claimed by the defendants that the aforesaid judgments are with respect to the suit property. In the considered view of this Court, the First Appellate Court erred in refusing to grant permission to lead additional evidence. Once it was being claimed that the aforesaid judgment and decree is with respect to the suit property, the Court should have allowed the application and permitted the defendants to produce copies of the judgments so as to examine the same.

Still further, both the Courts have also failed to examine the defence of defendant No.1 in the context of Section 53-A of the Transfer of Property Act i.e. continuation of possession in part performance of the agreement to sell. Defendant No.1 had claimed right to continue in possession on the basis of registered full payment agreement.

Keeping in view the aforesaid facts, this Court has come to a conclusion that the judgments passed by the Courts below are required to

be set aside. Hence, the judgments and decrees passed by the Courts below are set aside. The case is remitted back to the learned trial Court to grant opportunity to the parties to lead further evidence and thereafter proceed to re-decide the suit in accordance with law.

Both the parties are directed to appear before the trial Court on 21.04.2020.

In view of the above, the present Regular Second Appeal is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

17.03.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No