

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3925 of 2011 (O&M)
Date of Order: 16.03.2020

Rishi and others

..Appellants

Versus

Ram Dayal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Y.P.Khullar, Advocate
for the appellants.

Mr. Deepak Kumar, Advocate, for
Mr. R.S.Mamli, Advocate
for the respondents.

ANIL KSHETARPAL, J.

The plaintiffs-appellants have filed the present regular second appeal against the judgment and decree passed by the learned first appellate court while reversing the judgment and decree passed by the trial Court.

Plaintiffs claiming to be owners of the property comprised in Killa No.361 (4 kanal 1 marla), filed the present suit for grant of decree of permanent injunction along with decree for possession.

Plaintiffs claim that they are owners of the property and defendants have encroached upon the same two years ago. It is pleaded that defendants have entered into possession since 2-3 years on the entire land except land measuring 200 square yards.

Defendants while contesting the suit had pleaded that they are in possession of the suit property as owners on account of oral purchase and the plaintiffs have no right, title or interest in the property. They have also pleaded that houses have been constructed on the suit land by the

defendants and they were earlier recorded as 'Gair Marusi tenants' from the past more than 100 years and now, they are owners on account of oral purchase.

Learned trial court on appreciation of the evidence decreed the suit filed by the plaintiffs on the ground that in the absence of a registered sale deed, the defendants cannot claim any right, title or interest in the property as the transfer of property by way of a sale deed for an amount of more than Rs.100/- is required to be through a registered documents.

Defendants filed an appeal which was accepted. Learned first appellate court has found that as per the revenue record(s) since 1958, the defendants or their predecessors in interest are recorded to be in possession of the property. It is also recorded that on the property in dispute, houses have been constructed and the defendants are residing therein for more than 42 years. The first appellate court also recorded that in the revenue record also, entry in column no.9 which is referring to the status of a person, who is in possession is "Bashare Malkaan Bawaja Baiy zabani". Literal meaning of the aforesaid words is that the defendants or their predecessors are in possession with the permission of the land owners on account of oral sale. The first appellate court also found that there is no evidence that the sale was for an amount of Rs.100/- or more, therefore, the court has held that such sale is not required to be through a registered document. Thus, the first appellate court reversed the judgment of the trial court.

This court has heard the learned counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below along with requisitioned record.

Learned counsel appearing for the plaintiffs-appellants has

submitted that another suit filed by the defendants has been dismissed and the aforesaid judgment has been affirmed by the High Court in RSA No.3003 of 2008 decided on 05.03.2010 in *Girraj and another vs. Khiloni and others*. He, hence, submitted that the defendants have no right, title or interest in the property. He further submitted that the defendants have never pleaded that they are owners of the property on account of oral purchase. He further submitted that word “Gair Marusi” has been recorded in the revenue record since 1988 obviously referred to as that the defendants are in possession as tenants at Will and therefore, the first appellate court has erred in dismissing the suit filed by the plaintiffs.

On the other hand learned counsel for the defendants-respondents has supported the judgment of the learned first appellate court.

This court has critically analyzed the arguments of learned counsels for the parties. It must be noted here that from the judgment passed in the case of Girraj(supra), it is apparent that the plaintiffs have filed the separate suit for passing a decree for permanent injunction restraining the defendants (plaintiffs in the present suit) from demolishing of the construction of the plaintiffs in the suit land and from dispossessing the plaintiffs therefrom illegally and forcibly. Defendants herein in the aforesaid suit had claimed that they are tenants over the property. The aforesaid suit was decreed by the trial court, whereas the first appellate court reversed the judgment passed by the trial court. High Court in that appeal held that the defendants herein are not proved to be tenants as there is no evidence of payment of any rent. The court, however, found that the defendants are admittedly in possession of the suit land except 200 sq. yard area and therefore, they are entitled to an order of injunction. In the

considered view of this court, the aforesaid judgment does not help the case of the plaintiffs, rather it proves that the defendants are not in possession of the property as tenants as is now being contended by learned counsel for the plaintiffs.

Learned counsel for the appellants is factually incorrect in submitting that the defendants have not pleaded that they are in possession of the suit property as owners by way of oral purchase. Reference in this regard can be made to para 2 of the written statement, which is extracted as under:-

“Para No.2 of the plaint as stated is wrong and not admitted. It is wrong that the replying defendants have got no right, title or interest in the suit property as alleged. The replying defendants are in possession of the suit property as owners by way of oral purchase and the plaintiffs have no right, title, interest and concern therein.”

In the present case, on careful perusal of the revenue record i.e. Jamabandi from 1958, it is established beyond reasonable doubt that predecessors of the defendants are in continuous possession of the property with houses constructed thereon. In column no.9 , the entry is “Bashare Malkaan Bawaja Baiy Zabani” The meaning of the aforesaid Urdu words is that defendants are in possession with the permission of the plaintiffs, who are owners, on account of an oral sale. The aforesaid entry continued till the filing of the suits for a period of 42 years. Jamabandi is prepared every 4/5 years. The aforesaid entry is repeated in all successive jamabandies.

In these circumstances, the revenue record supports the case set up by the defendants. As rightly noticed by the learned first appellate court there is no evidence that the oral sale was for an amount of Rs.100/- or

upward. Still further, it has come on record that the defendants have constructed their houses and the existence of the house is proved from examination of the revenue record since 1958.

Keeping in view the aforesaid facts, this court is of the considered view that there is no substance in the arguments of learned counsel for the appellants. Hence, no ground to interfere with the findings of fact recorded by the learned first appellate court.

Consequently, regular second appeal is dismissed.

16th March, 2020
nt

(ANIL KSHETARPAL)
JUDGE

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