

In the High Court of Punjab and Haryana at Chandigarh

RSA- 3911 of 2012 (O&M)

Date of Decision: 4.3.2020

Sardar Singh

---Appellant

vs.

Ranbir and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. C.B.Goel, Advocate
for the appellant
Mr.K.K.Garg, Advocate
for respondents No. 1 and 2

Rekha Mittal, J.

The unsuccessful defendant No. 1 is in appeal to assail concurrent findings recorded by the courts whereby suit for possession filed by the respondents-plaintiffs was decreed by the trial court vide judgment and decree dated 22.4.2011 that came to be affirmed in appeal by the Additional District Judge, Sonapat vide decree and judgment dated 1.8.2012.

The respondent-plaintiff, Rati Ram son of Mange Ram (since deceased) claimed himself to be owner in possession of plot No.39/458 measuring 136 square yards situated in abadi deh of village Mandori, Tehsil and District Sonapat, detailed in para 1 of the judgment of trial court. It is pleaded that the suit plot was allotted to Sh. Mange Ram son of Ranpat in civil suit No. 54 decided on 28.3.1960 titled "Tek Chand etc. vs. Risala etc." by the court of Sub Judge Ist Class, Sonapat. The father of plaintiff laid foundation of the plot after filling the same with earth. He was using it

as gitwar for taking fuel woods, fodder, tethering cattle and preparing cow dung cakes. The defendants are owners in possession of plot bearing No. 38 measuring 633 square yards situated in the abadi deh of village Mandori towards Northern side of the plot in dispute. Plot No. 38 was allotted to Sube son of Chandgi and Risal Singh son of Jug Lal. The defendants filed civil suit No. 393 of 98/2000 for permanent injunction regarding plot No. 38, decreed vide judgment and decree dated 28.2.2005 by the trial court. The appeal filed against the said decree was dismissed by the Additional District Judge, Sonapat vide decree and judgment dated 30.7.2005. In the said suit, it was held that Sardar Singh and Om Parkash were owners in possession of plot No. 38 and the present plaintiff (defendant in earlier suit) was owner in possession of plot bearing No. 39/458 measuring 136 square yards and both the parties were held entitle to remain in possession of their respective plots and barred from interfering in possession of plot of the other party. The decision of the appellate court was upheld by the High Court of Punjab and Haryana in RSA No. 3819 of 2005 decided on 27.2.2006.

The appellant-defendants filed the written statement raising preliminary objections regarding maintainability, locus standi, cause of action, estoppel, limitation, concealment of true and material facts, non-joinder and misjoinder of parties and suit being under valued. It is averred that on partition of abadi deh of the village on 28.3.1960, plot No. 39/458 measuring 136 square yards was allotted to Bharat Singh and in place of the said plot, the plaintiff was allotted plot No. 465/442 in an objection petition filed therein on the basis of old possession of Bharat Singh over plot No.

39/458. The legal heirs of Bharat Singh sold it to Suresh son of Khazan Singh vide registered sale deed. From Suresh, Sardar Singh purchased 17 feet of the said plot and included it in plot bearing No. 38. They denied the plaintiff to be owner or in possession of plot No. 39/458 with the averments that its dimensions have not been correctly described.

The trial court framed the issues, reproduced in para 5 of the judgment of said court. The parties adduced evidence, reference whereof has been made in paras 6 and 7 of the judgment of said court. As has been noticed hereinbefore, the trial court decreed the suit by accepting plea of Rati Ram (since deceased) represented through his legal representatives that plot No. 39/458 measuring 136 square yards is the ownership of Rati Ram allotted to Sh. Mange Ram son of Ranpat, his father vide decree dated 28.3.1960 in civil suit No. 54 and the plaintiff is entitled for possession of suit plot with a direction to the defendants including the appellant to remove malba from the plot in question and deliver its vacant possession to the respondent-plaintiff.

The appeal preferred by unsuccessful defendant-appellant was dismissed as the appellate court affirmed findings of the trial court without variance.

Counsel for the appellant would argue that in civil suit No. 54 of 1958, objections were filed against report of the local commission appointed by the Court with regard to allotment of plot No. 39/458 measuring 136 square yards which was in possession of Bharat Singh son of Jug Lal with a request to allot plot No. 465/442 which is stated to be in possession of the objector in which he had planted trees and raised kurdi

and batora etc. For this purpose, reference has been made to document marked as Ex. D9. It is further argued that in Khatauni Fahrist Ex. D16, plot No. 39/458 is shown to be allotted to Bharat Singh son of Jug Lal. It is argued with vehemence that conjoint reading of documents Ex. D9 and D-16 leads to an inescapable conclusion that plot No. 39/458 was allotted to Sh. Bharat Singh, therefore, the respondent-plaintiff has wrongly claimed his ownership of the aforesaid plot and entitlement to recover its possession from the defendants including the appellant. It is further argued that courts have committed a gross error rather perversity by upholding plea of Rati Ram that he is owner in possession of the plot in dispute and entitle to recover its possession from the appellant. According to counsel, plot No. 39/458 measuring 136 square yards was sold by successors in interest of Bharat Singh in favour of Suresh vide registered sale deed proved on record and said Suresh sold 17 feet out of the disputed plot in favour of the appellant and the same has been included in plot No. 38 situated on Northern side of the plot in dispute.

Counsel for the respondent-plaintiff, on the contrary, has supported concurrent findings recorded by the courts with the submission that Mange Ram son of Ranpat was allotted six plots total measuring 990 square yards in the decree of partition dated 28.3.1960 and the decree sheet was prepared on 5.8.1975. It is further argued that the decree of partition qua abadi deh of village Mandori is not modified or reversed, thus, the appellant can not be heard to say that disputed plot was allotted to Bharat Singh nor can he assert his claim in respect of 17 feet of area of disputed plot on the basis of sale deed purported to be executed by Suresh, stated to

be purchaser of this plot from successors in interest of Bharat Singh. It is further argued that in a suit for permanent injunction filed by the defendants including the appellant against Rati Ram, it was decided that defendants are owners of plot No. 38 measuring 633 square yards to which Rati Ram did not claim any right, title or interest whereas plot No. 39/458 measuring 136 square yards was held to be ownership of Rati Ram son of Mange Ram. It is further argued that findings in the suit for injunction have attained finality upto the High Court.

I have heard counsel for the parties, perused the paper book and records of the present suit as well as civil suit No. 54 of 1958 decreed on 28.3.1960.

Counsel for the appellant has failed to point out any materials available on the original records of Civil Suit No. 54 of 1958 to prove that plot No. 39/458 was allotted to Bharat Singh son of Jug Lal. On the contrary, as per the decree prepared by the court in August 1975, the disputed plot was allotted to Sh. Mange Ram son of Ranpat who was allotted five more plots including plot No. 465 measuring 442 square yards. As has rightly been held by the Court in Appeal, the decree passed in the previous litigation in respect of allotment of plot No. 39/458 to Sh. Mange Ram has not been reversed or set aside, therefore, the appellant can not derive any advantage to his contentions from the documents marked as Exs. D9 and D-16. Counsel for the appellant read document Ex. D9 in vernacular as well as its translation in English in document mark 'C'. In mark 'C', there is no reference as to who raised objections against the report of the commissioner. Similarly, perusal of document Ex. D9 in vernacular

does not make it clear that objections were raised by Mange Ram. On the contrary, in the last line of the document, name of person is mentioned as Mauji son of Pehlad Jat resident of village Mandori and date is mentioned as 18.12.1959. In the margin of extreme right, it is stated '*angutha* Mange Ram'. There is no other document produced on record that objections noticed in document mark D9 were ever accepted by the court in respect of allotment of plot Nos. 39/458 and 465/442. On the other hand, as per the decree passed in the earlier litigation, both the aforesaid plots were allotted in favour of Mange Ram father of Rati Ram. Even document Ex. D-16 khatauni fahrist does not bear any date to show that it was prepared subsequent to decree dated 28.3.1960 was passed on the basis of preliminary decree dated 11.7.1959 and report of Sh. Ramjivan, Advocate, appointed as commissioner to suggest the mode of partition. In this view of the matter, I do not find any reason to interfere in consistent findings recorded by the courts that Mange Ram was allotted plot No. 39/458 measuring 136 square yards and Rati Ram son of Mange Ram is entitle to possession thereof.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

4.3.2020
paramjit

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