

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4577-2019 (O&M)

Date of Decision: November 26, 2020

FATEH SINGH AND OTHERS

..... PETITIONER(s)

Versus

GRAM PANCHAYAT, VILLAGE RASULPUR KALAN

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Prateek Sodhi , Advocate
for the appellants.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

The appellants-plaintiffs have filed this appeal challenging judgment and decree dated 12.07.2019, passed by the learned Additional District Judge, Amritsar as well as judgment and decree dated 07.11.2016, passed by the learned Civil Judge (Junior Division), Amritsar, whereby their suit for permanent injunction for restraining the defendant-Gram Panchayat from interfering in their peaceful and lawful possession over the Haveli, as mentioned in the suit, has been dismissed.

Brief facts necessary for adjudication of the case are that the appellants-plaintiffs filed a suit for permanent injunction as above while pleading that the plaintiffs and their forefathers had been in continuous possession of the suit property, which was used by them as Haveli and with

many trees being planted thereon. One of the forefathers of the plaintiffs, namely Captain Kesar Singh, was stated to have served the British Army and there was a Samadh of Captain Kesar Singh on the disputed property prior to independence. It is further pleaded that the defendant-Gram Panchayat has no right, title or interest over the suit property, which was in possession of the plaintiffs as its owners. Due to some political reasons, the defendant, it is pleaded is threatening to interfere in the peaceful and lawful possession of the plaintiffs over the suit property. Hence, the suit was filed.

The defendant-Gram Panchayat did not appear before the learned Trial Court and was proceeded ex parte on 11.09.2015. The plaintiffs examined four witnesses. Appellants-plaintiffs Fateh Singh and Kuldip Singh also stepped in the witness box as PW1 and PW4, respectively. Site plan Ex.P-1, photographs Ex.P-2 to P-5 were tendered in evidence.

Learned trial Court on consideration of the ex-parte evidence on record, facts and circumstances, concluded that the plaintiffs had failed to prove their possession over the suit property even to the extent of preponderance of probability. Accordingly, the suit was dismissed.

In the appeal preferred by plaintiffs-appellants, the Gram Panchayat chose to contest the proceedings. Learned Additional District Judge, Amritsar, vide impugned judgment and decree dated 12.07.2019 found no merit in the appeal and accordingly dismissed the same. Aggrieved therefrom, present appeal has been filed.

Learned Counsel for the appellants vehemently argues that sufficient evidence has been produced by the plaintiffs to prove the appellant's possession over the suit property. It is submitted that learned Courts below have mis-read the evidence produced by the appellants, which in any case has

gone un-rebutted. Respondent-Gram Panchayat was proceeded ex-parte before the learned trial Court, though, they were represented before the learned District Judge, Amritsar in the appeal filed by the present appellants. Learned counsel for the appellants argues that once the evidence produced by the appellants has gone un-rebutted, learned Courts below should have allowed the suit filed by the plaintiffs. It is also contended that there is no necessity of proving ownership of the plaintiffs over the suit property, as the present is not a suit based on title but is merely a suit for permanent injunction. It is contended that both the learned Courts below have wrongly drawn an adverse inference on account of electricity bills not being produced by the appellants. Learned counsel argues that the appellants were under a genuine bonafide impression that the evidence adduced by them was sufficient to prove their case for permanent injunction against the respondent/defendant. Moreover, no legal advice was given to them for tendering electricity bills of the premises in their possession. An application (CM-4560-C-2020) has been moved by the appellants for adducing additional evidence at this stage in the present regular second appeal. It is prayed in the miscellaneous application that the appellants be permitted to tender into evidence, the original bills of account Nos.A51RK351372Y and A51RK352464X. The appellants also seek an opportunity to examine the concerned Clerk/Official from the Office of PSPCL, Amritsar, to produce and prove records of the said account numbers.

Learned counsel for the appellants urges that the plaintiffs have been in possession of the property in question since the time of their forefathers, therefore, in the given facts and circumstances, the present appeal as well as the application for additional evidence should be allowed.

Consequently, the suit filed by the plaintiffs should be decreed throughout as prayed for.

I have heard learned counsel for the appellants and have gone through the file with his assistance.

Specific case of the appellants-plaintiffs is that the suit property is in their possession since time of their forefathers and that they are in possession of the suit property. This is stated to be reflected from the presence of the Samadh/grave of their forefather Captain Kesar Singh. Reliance is sought to be placed on the ex-parte evidence adduced. Learned counsel for the appellants, however, unable to point out any infirmity or irregularity in the finding of the learned Courts below. It is rightly observed by the learned Additional District Judge, Amritsar that the Samadh/grave of Kesar Singh is reflected in the photograph of Ex.P-3 but the said photograph does not correspond with the site plan Ex.P-1 as the said Samadh is not reflected in the site plan Ex.P-1. Further, it is correctly observed that pleadings of the appellants/plaintiffs are contrary to the site plan produced by them in as much as the site plan Ex.P-1 reflects the suit property to be outside the abadi deh of village, which is in contradiction to the specific pleadings of the plaintiffs that the suit property is within the abadi deh and therefore, there is no mention of any Khasra number etc.

Doubtlessly, in a suit for permanent injunction, the plaintiffs are not required to prove their title. The plaintiffs cannot derive any benefit of the observation of learned Addl. District Judge, Amritsar to the extent that the pleadings and evidence is silent regarding the capacity in which they allegedly possess the suit property, for the reason that the same does not in any manner mean that the plaintiffs have been non-suited on the ground of inability to prove their ownership, as suggested by learned counsel. The said observation is

merely directed to indicate that the plaintiffs have failed to prove their possession over the property in dispute.

In so far as the application for leading evidence moved by the appellants in this appeal is concerned, it is apparent that the same is a clear cut attempt to fill up the lacuna in their case. Learned trial Court itself had clearly observed in the impugned judgment dated 07.11.2016 that the plaintiffs have not even produced any electricity bill etc. to indicate their possession over the suit property. The appellants had admittedly not taken any steps before the first appellate Court to prove such electricity bills. It is only when a similar reference has been made in the impugned judgment dated 12.07.2019 by the learned ADJ, Amritsar that the an application (CM-4650-C-2020), to lead additional evidence has been moved. It is relevant to note at this stage that in CM-4650-C-2020, it is mentioned that one receipt/electricity bill of account no.A51RK351372Y is attached as Annexure A-1, even though it is mentioned in para 6 of the application that the appellants seek to tender into evidence the original bills of account numbers A51RK351372Y and A51RK352464X. Surprisingly even this sole receipt/bill was not attached with the application and the appellants vide CM-5331-C-2020 have sought to place on record the bill/receipt dated 05.09.2020 in respect to account numberA51RK351372Y,while submitting that it is due to an inadvertent mistake that the said bill/receipt could not be attached along with CM-4560-C-2020. It is to be pointed out at this stage that CM-4560-C-2020 was filed on 25.08.2020 and photocopy of the bill/receipt sought to be placed on record as Annexure A-1 is issued subsequently on 05.09.2020. As per the said bill/receipt the date of the connection is stated to be 19.03.1994 in the name of Bakhish Singh, the address is mentioned as Sadu Singh. There is indeed no electricity

bill sought to be placed even as on date indicating possession of the plaintiffs on the time of their forefathers as pleaded in the suit. There is no reasonable explanation for not having adduced the relevant electricity bills, if at all available with the plaintiffs. Merely to say that they were under a bonafide impression that the evidence led by them was sufficient, is clearly not enough. Admittedly, no action was taken by the plaintiffs to adduce such evidence before the learned first appellate Court. There is, thus, no ground whatsoever to allow the application for adducing additional evidence at this stage, which is a clear cut attempt to fill up lacuna by the plaintiffs. Application is accordingly dismissed.

A perusal of the file clearly shows that the plaintiffs have clearly failed to prove their case on the basis of evidence led by them before the learned trial Court. Argument raised by learned counsel for the appellants that the suit should have been allowed as the Gram Panchayat had not contested the suit before the learned trial Court, is clearly untenable, hence, rejected. It is settled position that it is for the plaintiff to make out his case on the basis of clear cut and cogent evidence to substantiate his stand.

Keeping in view the facts and circumstances as discussed above, there is no question of law much less a substantial question of law, which is involved for consideration in this regular second appeal. Both the learned Courts below have rendered correct concurrent findings on a proper appreciation of the evidence on record. Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 12.07.2019, passed by the learned Additional District Judge, Amritsar, as well as judgment and decree dated 07.11.2016, passed by the

learned Civil Judge (Junior Division), Amritsar, which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

26.11.2020

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No