

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5732-2015(O&M)
Date of decision: 03.02.2020

Hardayal Singh and others

.....Appellants

Versus

Puran Singh (deceased) through his Lrs and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Manish Prabhakar, Advocate for the appellants

Mr. Manjit Singh Khaira, Sr. Advocate with
Mr. Gaurav Gulati, Advocate for respondents

ANIL KSHETARPAL, J.

CM-14090-C-2015

For the reasons stated in the application, delay of 286 days
in filing the appeal is condoned. CM stands allowed.

Main case

The defendants no.3 & 5 to 7 have filed the present appeal
against the finding of fact arrived at by the learned First Appellate Court
while reversing the judgment and decree passed by the learned Trial
Court.

The original plaintiff-Puran Singh had filed a suit for
permanent injunction restraining the defendants from interfering into his
peaceful possession and further restraining the defendants from
trespassing and using the land as a common passage or dumping garbage.

The plaintiff-Puran Singh claimed that he had taken the land in question

on lease from Punjab Wakf Board-the original owner. During the pendency of the present suit, Puran Singh died now represented by his Lrs.

The defendants no. 3 to 10 contested the suit and pleaded that the land vested with the Gram Panchayat and is being used for passage as there is market on both the sides. The defendants no. 3 to 10 also filed a counter claim claiming that the Gram Panchayat of the village by passing resolutions dated 18.7.1977 and 16.11.1988 have already spent amount on brick paving the entire area, and therefore, it was prayed that the plaintiff be restrained from raising any construction. Learned Trial Court dismissed the suit whereas learned First Appellate Court on re-appreciation of evidence found merit in the case of the plaintiff. The Court examined the revenue record and found that the suit land is owned by Punjab Wakf Board. Mohd. Nusrat, Rent Collector of the Punjab Wakf Board has also appeared as PW3 and stated that Puran Singh was lessee under the Punjab Wakf Board till his death and thereafter, his Lrs are in possession. He also admitted execution of the lease deed Ex.P-1 and receipt evidencing payment of rent Ex.P-2 to P-12. The aforesaid witness admitted that although Ajit Singh was given the land in dispute on lease w.e.f 1.4.2010, however, since possession of the disputed land was never taken from Puran Singh therefore, he (Puran Singh) continued to be in possession.

With these findings learned First Appellate Court has reversed the judgment and decree passed by the learned Trial Court.

This Court has heard learned counsel for the parties at length

and with their able assistance has gone through the judgments passed by the Courts below.

Learned counsel for the appellants submitted that once the subsequent lease deed in the year 2010 is in favour of Ajit Singh, therefore, Puran Singh or his Lrs have no right or title or interest in the property. He further submitted that admittedly the piece of land falls in between the two markets and therefore, it must be assumed that the land is a common area.

On the other hand, learned senior counsel appearing for the respondents has submitted that once the Rent Collector of the Punjab Wakf Board while appearing in evidence has deposed that the possession of the piece of land was never taken from Puran Singh or he was never dispossessed, the plaintiff continued to be in possession, hence, entitled to protect his possession. He further submitted that the Gram Panchayat or the defendants have failed to show any right, title or interest in the property. He submitted that as per revenue record the Punjab Wakf Board is owner of the property in dispute.

This Court has considered the submissions.

On careful analysis of the arguments of the learned counsel for the parties, this Court is of the considered view that there is no substance in the present appeal. The lease deed w.e.f 1.4.2010 in favour of Ajit Singh has been explained by the Rent Collector, who appeared on behalf of Punjab Wakf Board, the owner of the property. Once Puran Singh was lessee in possession, fresh lease deed in favour of Ajit Singh without taking possession of the premises would not result in

dispossession of Puran Singh automatically. Still further, defendants do not claim to be successors in interest of Ajit Singh, therefore, there is no substance in arguments of the learned counsel for the parties that Puran Singh-plaintiff had nothing to do with the property.

As regards, second argument of learned counsel for the appellant that since the land in dispute falls in between the two markets, therefore, it must be assumed to be a common area, is to be noted and rejected. In a village, the common land is specifically described in the revenue record. The common land is normally owned by Gram Panchayat or Musktara Malkhan. At the time of the consolidation of holdings, such area is specifically earmarked. The defendants have failed to produce any document to prove that this land was either reserved for common purposes of the village or was ever used. Mere brick paving of a piece of land by the Gram Pachayat, would not confer any right in the land in dispute in favour of the Gram Panchayat. Further, Gram Panchayat has never come forward to stake any claim.

Hence, dismissed.

03.02.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No