

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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Date of decision:29.1.2020

1. RSA No.4212 of 2017 (O&M)

Shadi (since deceased) through his LRs

... Appellant

versus

Mahi Pal

... Respondent

2. RSA No.52 of 2018 (O&M)

Pehlad

... Appellant

versus

Mahi Pal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr. B.S.Tewatia, Advocate,
for the appellant in both appeals
...

AMOL RATTAN SINGH, J.

1. The appellants, Shadi (since deceased) through his LRs (in RSA no.4212 of 2017) and Pehlad (in RSA no.52 of 2018), have come in these two Regular Second Appeals, they having remained unsuccessful in both the courts below, with the suits filed by them having been dismissed.

Both the appeals are seen to have been taken up together ever since May 24, 2018, even though there is no specific order seen that they should be heard together.

However, even today learned counsel for the appellant has submitted that as a matter of fact though both the appeals arise out of two separate civil suits filed by two different persons, decided by separate

judgments, the nature of the suits was the same, against the same respondent, Mahi Pal, and in fact the properties in question in both the suits are properties almost adjoining each other and consequently the outcome of one appeal would, *mutatis mutandis*, apply to the other.

That being so, the facts in detail are being taken from the appeal filed earlier, i.e. RSA no.4212 of 2017, titled as Shadi (now deceased) through his LRs v. Mahi Pal.

RSA no.4212 of 2017

2. The appellant-plaintiff filed a suit seeking possession and a decree of mandatory injunction directing the respondent-defendant to remove the encroachment made by him on the suit land, including by removing the boundary wall constructed and to thereafter hand over vacant possession to the plaintiff.

3. The respondent herein having appeared before the trial court, in his written statement he first took the usual preliminary objections on the maintainability of the suit, cause of action etc., with him stating on merits that the residential house and the *rasta* situated within the *Abadi Deh* of village Syaroli, Tehsil Hathin, District Palwal, did not actually tally with the *Abadi* layout shown in the *Aks Sizra* for the year 1877, drawn up at the time of the *Bandobast*.

He also submitted that in fact the record was not available with the revenue authorities, including the record of the suit in dispute bearing *Ahata* no.146, *Ghar* no.266.

It was further stated in his reply that the appellant and one Pahlad (the appellant-plaintiff in the other connected appeal/suit) in collusion

with one Kishan had earlier filed a suit titled as Pahlad v. Kishan and by misleading the court had obtained a demarcation report, after the Naib Tehsildar, Hathin, was appointed as a local commissioner in that *lis*.

That demarcation report, as per the respondent herein, was a false and fabricated one, with even the local commissioner being in possible collusion with the plaintiff in that case.

Thus the respondent-defendants' contention in the present *lis*, was that in the absence of the original record, the demarcation of the suit property could not have been conducted and the identity in fact of the property was not established.

4. From the aforesaid essential pleadings (as referred to by the courts below), the following issues were framed by the trial court:-

- “1. Whether the plaintiff is entitled to a decree for possession regarding the suit property? OPP.
2. Whether the plaintiff is entitled to decree for mandatory injunction to remove boundary wall of defendant from the suit property? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no *locus standi* and cause of action to file the present suit? OPD
5. Whether the plaintiff is stopped by his own act, and acquiesces, from filing the present suit? OPD
6. Whether the plaintiff has concealed the material facts from the court? OPD
7. Relief.”

5. The parties having led their evidence, with the appellant having examined himself and two other witnesses, as also having relied upon a demarcation report, a site plan and an old Urdu document, the respondent having also examined himself, one Mohan Singh, Record Keeper and one Rajbir, with his documentary evidence also seen from that courts' judgment to

be in the form of one photocopy of an Urdu document, a *Khasra Paimaish*, an application seeking a copy of document and a photocopy of a report of the Record Keeper.

6. After having considered the pleadings and the evidence, as also the arguments raised, the trial court first observed that the appellants' allegation was that the respondent-defendant had encroached upon 73 sq. yds. as was the area of the suit property which was noticed by the local commissioner in his demarcation report dated 29.12.2012, with the present *lis* having been instituted on 24.05.2013.

However, it was held by the that court that since that was a demarcation report relied upon as had been called for in a previous *lis*, it was necessary for the appellant-plaintiff to have examined the local commissioner in the present *lis*, which he did not do, and also gave no explanation for not doing so. Hence the said demarcation report was held to be not proved, as the respondent-defendant had been deprived of a valuable right to cross-examine the person who had prepared the report.

It was further noticed by the trial court that in paragraph 2 of the plaint the appellant herein had stated that “he had filed another suit” titled as Pahlad v. Kishan in which the aforesaid demarcation report was prepared, but that it had been pointed out during arguments by the counsel for the respondent-defendant that that suit had actually been dismissed in default, with the counsel for the appellant-plaintiff having admitted that fact.

Hence, it was held by the trial court that the plaintiff having concealed that material fact, he was therefore not entitled to any relief in the present case.

It was next observed by that court that though the appellant claimed that he along with his family members was the owner of the property, which had been given to him in a family settlement, he had not joined any of his family members as a party in the present suit and consequently, it was also liable to be dismissed for non-joinder of necessary parties.

Last, it was held that as per the documents relied upon by the respondent-defendant, it was obvious that the record of the *Abadi Deh* of the village was not available, and therefore it was not possible in any case for a demarcation to have been conducted by the local commissioner.

7. On the aforesaid findings, issues no.1, 2 and 6 were decided against the appellant-plaintiff, with issues no.3 to 5, on the maintainability of the suit etc., held in favour of the plaintiff, they not having been pressed by the respondent-defendant.

Consequently, the suit of the appellant was dismissed.

8. In the first appeal filed by the appellant, the learned District Judge, Palwal, also came to the same conclusion, essentially on the same reasoning, with however that court having discussed the documentary evidence led by the plaintiff in a little more detail.

As regards the copy of the *Naksha Khasra Pamaish* of the *Abadi Deh* as was produced as Ex.P-2 (a copy thereof), it was held that it established that the suit land, measuring 2 *biswa* 14 *biswanis*, was a *Gait* (plot) originally owned by one Deepa son of Miraka. Ex.P-3 was found to be a *Naksha* prepared in Urdu, the Hindi version of which has not been placed on record.

The contention raised before that court was that the suit property

originally owned by Deepa, had fallen to the appellant as his share, but the appellant had not produced any pedigree table to show that Deepa was his grandfather and that he had inherited the suit property from him, and consequently, simply on his oral statement to that effect, it could not be accepted that he was the owner of the property.

Even as regards the documents themselves, the aforesaid two Nakshas, i.e. Exs.P-2 and P-3, it was held that the documents were certified by the court of the Additional Civil Judge (Sr. Divn.), Hathin, being such documents as were on the record of Civil Suit bearing no.168 of 2013, titled as Pehlad v. Mahi Pal (that being the suit out of which the accompanying appeal bearing RSA no.52 of 2018 eventually arises).

Hence, holding that the said documents had not actually been certified to be true copies of the originals by any revenue officer, they could not be held to be proved, especially because even in the earlier suit, titled as Pahlad v. Kishan, the said demarcation was ordered to be conducted with no original *Naksha Khasra* and *Shizra* of the village being available, and that only photocopies thereof had been considered while preparing the demarcation report.

9. The contention of the appellant that the original record was not available and therefore the photocopies of the documents were to be relied upon, was also rejected, on the ground that the Naib Tehsildar in any case not having been examined himself, simply by way of examination of a retired Girdawar, i.e. Om Parkash, PW-2, who stated that he was present at the time when the demarcation was conducted, that was not sufficient evidence.

That court also held that “Pukhta points” as would have been

available in the original document, were also not therefore taken into consideration, to conduct the demarcation.

10. Having held as above, it was further observed by the first appellate court that though undoubtedly the respondent had also not clarified as to what right he has over the disputed property, with him however not claiming to be the owner thereof, it was for the appellant to have proved, by standing on his own legs, at the property belonged to him (appellant-plaintiff).

Holding as above, the first appeal filed by the appellant was dismissed.

11. On an earlier date that this case had come up, i.e. on January 15, 2020, having looked at the aforesaid facts, this court had not actually been inclined to entertain the appeal at that stage itself, but upon learned counsel having raised an argument that the demarcation report stood fully proved in the previous *lis*, titled as Pahlad v. Kishan, the following order had been passed:-

“Learned counsel for the appellant would go through the contents of paragraph 10 of the judgment of the learned Additional Civil Judge (Sr.Divn.), Hathin, dated 21.08.2015, wherein it has been stated that the earlier suit titled as “Pehlad vs. Kishan” had been filed, which had been dismissed in default but which fact had not been stated in the plaint filed by the appellant in the current *lis*. He would justify in view of that fact, as to why this appeal should be entertained.

Adjourned to 29.01.2020.

A photocopy of this order be placed on the file of the other connected case.”

12. Today, learned counsel for the appellant has produced in court an order passed by the learned Civil Judge (Junior Division), Hathin, on

26.9.2013, in a suit titled as “Prahlad and Sadi vs. Kishan son of Leela”, which is seen to be a suit filed by both the plaintiffs in these two appeals, seeking a decree of permanent injunction against the defendant therein (Kishan son of Leela), with counsel for the plaintiffs (in that case) having made a statement that he did not want to proceed with that suit, and with it consequently having been withdrawn.

13. Learned counsel now submits before this court that in fact that suit has nothing to do with the current *lis*, inasmuch as the defendant in that suit, Kishan, is a neighbour on one side of the land belonging to the appellant, with respondent Mahi Pal being a neighbour on the other side, and consequently, with that suit having been filed against Kishan, seeking only a decree of permanent injunction, withdrawal of that suit qua that relief would have no bearing at all on the present *lis*, and hence the trial court has taken a wholly erroneous view qua any concealment made by the appellant in the suit in the present *lis*.

He next submits that even the lower appellate court has wholly erred in holding that the demarcation of the suit property, conducted in the suit that was withdrawn was not a report that could be relied upon, since the documents relied upon in that case were also not certified by a revenue official but only by the court itself and because no revenue official had been examined in the present *lis* to prove those documents.

He submits that as a matter of fact one Om Parkash, a retired Girdawar, had testified in the present *lis* to the effect that the signature on the demarcation report led by way of evidence as Ex.P-1 was that of the Naib Tehsildar, and therefore, that report could not have been discarded.

He further submits that though that suit had otherwise no bearing on the present suit in which encroachment by the respondent on the other side of the suit property has been alleged, however, since the demarcation conducted in that suit, was of the entire property on both sides, the demarcation report itself, i.e. Ex.P-1, was sufficient evidence to prove that there was an encroachment.

14. Even having considered the aforesaid arguments, what further needs to be noticed by this court is that the learned lower appellate court had gone into the details of evidence led and had found that as per Ex.P-2, which was seen to be a *Naksha Khasra Pamaish* of the *Abadi Deh village Syaroli*, prepared in the year 1867, the land comprised in *Ahata* no.146, *Ahata* no.266, measuring 2 *Biswa* 14 *Biswansi*, was shown to be a *Gait* (plot) owned by one Deepa son of Miraka, with Ex.P-3 being a copy of a *Naksha* prepared in Urdu, the Hindi version of which had not been placed on record.

In the opinion of this Court, even if the fact that the Hindi version of the document was not placed on record is to be ignored (as it could easily have been translated), however that court has further gone on to hold that the disputed property, bearing no.146/266, i.e. *Ahata* no.146, *Ghar* no.266, was originally owned by the aforesaid Deepa, but with the appellant having failed to show that Deepa son of Miraka was actually his ancestor.

Hence it was held that the land occupied by Deepa could not be proved to have ever come into the ownership or possession of the appellant.

In fact upon query to the learned counsel by this court as to how it was proved that the appellant ever came into possession of the suit land, or if that is to be accepted in any manner, how then it came into possession of

the respondent-defendant, there is no answer forthcoming to say that any evidence was led to that effect.

15. That being so, both the learned courts below having recorded finding of facts as above, I would find absolutely no reason to interfere with those findings, specifically because even if for any reason it could be shown that the demarcation report (Ex.P-1) was otherwise an authentic document, it was obviously not accepted as the correct demarcation even in the previous *lis* between Pahlad and Kishan, with that suit having been in any case withdrawn.

Further, the very fact that the appellant could not establish his link to the original owner of the suit property, i.e. to Deepa, and as to how he himself came into possession (as alleged) and was dispossessed by the respondent-defendant (as contended by the learned counsel), would be reason enough to not interfere with the judgments of the learned courts below.

Consequently, finding no merit in this appeal, it is dismissed *in limine*.

RSA No.52 of 2018 (OP&M)

16. This second appeal that arises eventually out of Civil Suit no.168 of 2013, pertains to the suit property bearing *Ahta* no.145, *Ghar* no.265, also situated within the within the *Abadi Deh* of village Syaroli, Tehsil Hathin, District Palwal.

Though the boundaries of the two properties are obviously different, the plea of the appellant-plaintiff in this suit also was that the suit land was given to him by his family members in a family settlement and that he being a co-owner, was entitled to institute the suit against the defendant.

Allegations of the suit property having been encroached upon and a boundary wall having been made upon it by the respondent-defendant were made in this case also.

The respondent-defendant is seen to have filed an almost identical written statement in the present suit as he had in Civil Suit no.175 of 2013, as is subject matter of the appeal decided herein above.

In fact the issues framed in this suit are *ad verbatim* the same as those framed in the other suit.

The trial courts' reasoning for dismissal of the suit is also seen to be identical to that while dismissing the other suit, as is that of the learned first appellate court, though in this case that court has observed that as per the respondent-defendant, the demarcation conducted in the suit titled as Pahlad v. Kishan was done by the Naib Tehsildar under political pressure.

17. Further, what is seen to be different in the present case from the other one decided herein above, is that in this case the appellant-plaintiff (Pahlad) had also relied upon a copy of a *Jamabandi* for the year 1976-77, pertaining to some agricultural land situated in village Mandkola, in which the name of his father, Pyare Lal, was seen, as the son Sh. Khadakiya son of Sh. Hardev, who was shown to be the owner of that property along with his three brothers.

The appellant-plaintiff had therefore contended that he being the son of Pyare Lal, was the successor-in-interest of Hardev, whose name was mentioned in the *Naksha Khasra*, Ex.P-2, pertaining to the *Abadi Deh* of village Syaroli, Tehsil Hathin, District Palwal.

18. However, that contention was also rejected by the first appellate

court, by holding that the appellant being the successor-in-interest of Hardev could not be established in the face of the document produced by the respondent as Ex.D-1 (pedigree table), in which though Khadakiya was shown to be the son of Hardev, Pyare Lal was not shown to be entered as the son of Khadakiya.

No evidence to the contrary having been produced by the appellant-plaintiff by way of any pedigree table, consequently he was not found to have proved himself to be the successor-in-interest of Hardev who had inherited the suit property.

The remaining reasoning for dismissing the appeal is seen to be identical to that as was given in dismissing the suit of the appellant-plaintiff in the other suit (Shadi).

It needs to be stated here that though learned counsel for the appellant before this court presently had stated that the decision in one suit would necessarily follow the decision by this court in the other appeal, the aforesaid differentiating facts were necessary to be noticed.

Hence, for the reasoning already given while dismissing RSA no.4212 of 2017 herein above, this appeal is also dismissed *in limine*.

29.1.2020
vcgarg/pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes