

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4718 of 2018 (O&M)
DATE OF DECISION: 12.03.2020

Silak Ram

....Appellant

versus

Samunder Singh

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Adarsh Jain, Advocate for the appellant

..

ALKA SARIN, J.:

The plaintiff-appellant is in second appeal against the judgements and decrees passed by both the Courts below whereby his suit for declaration and *mesne* profits has been dismissed.

The facts, as extracted from the judgements of the Courts below, are that Amrit son of Ram Rattan was the owner-in-possession of Khasra No.14056 and Gosa of Bandobast of year 1879. The land of said Khasra number is situated in village Chhara, Tehsil Jhajjar, District Rohtak (now Tehsil Bahadurgarh, District Jhajjar) as shown by the letters ABCDEF in the site plan. It was further pleaded that after the death of Amrit, the plot above was inherited by his son Nobat and after the death of Nobat it was inherited by Indraaj (grand father of the plaintiff-appellant) vide mutation no.2143 of 9.9.1936.

After the death of Indraj, the plot was inherited by Deep Chand and then by the plaintiff-appellant and his brothers vide mutation no.5449 of 4.4.2001. The plaintiff-appellant further stated that Khasra No.14056 and its Gosa was included in the *abadi deh* by carving out Khasra No.3744 wherein other khasra numbers were also merged in 1909-1910. The plaintiff-appellant had earlier filed a suit for permanent injunction but the Trial Court had dismissed the suit holding that the plaintiff-appellant was not having possession over the suit property. The plaintiff-appellant had filed an appeal but withdrew the same to file a suit for possession leading to the present suit. The defendant-respondents, being strong-headed persons, acquired forcible possession of the suit plot which is illegal, without any authority and the defendant-respondents are liable to be evicted from the suit land.

The defendant-respondents contested the suit and raised several preliminary objections in the written statement. On merits it was contended that Amrit son of Ram Rattan was neither owner nor remained in possession of the suit property which is also not a part of Khasra No.14056 and its Gosa and that the plaintiff-appellant and his brothers, father Deep Chand and grandfather Indraj are not the descendants of Amrit and, thus, the question of inheritance of Khasra No.14056 by the plaintiff-appellant does not arise. It was also submitted that Khasra No.14056 being Shamlat land was owned and possessed by the proprietors of the village Chhara and that the plaintiff-appellant is not the proprietor of village Chhara while the defendant-respondents are the proprietors of village Chhara. All

the sons of Amrit viz. Siri Chand, Mahipat, Nobat and Nonad died issueless and intestate, therefore, their tenancy had reverted back to the proprietors of village Chhara. The defendant-respondents further raised the plea of adverse possession and also pleaded that the plaintiff-appellant had filed a civil suit bearing No.254 of 2001 claiming his possession over the suit property but the same was dismissed by the Court vide judgement and decree dated 16.10.2009 holding that the plaintiff-appellant was neither having possession of the suit property nor the suit property was part of Khasra No.14056.

The Trial Court framed eight issues for determination. Both sides led extensive oral and documentary evidence. Vide judgement and decree dated 31.07.2015 the Trial Court dismissed the suit of the plaintiff-appellant. His appeal before the lower Appellate Court was also unsuccessful which dismissed the same vide judgement and decree dated 23.03.2018. An application filed by the plaintiff-appellant for leading additional evidence was also dismissed by the lower Appellate Court. Hence, the present second appeal by the unsuccessful plaintiff-appellant.

The counsel for the plaintiff-appellant has urged that the judgments and decrees passed by the Courts below are against the facts and law applicable to the present case and that the Courts below had not considered the same in the proper perspective. He also urged that the lower Appellate Court wrongly dismissed the application for production of additional evidence. He placed reliance upon the copy of the Khewat, Ex.PW6/A

to contend that Khasra No.14056 was under the ownership of Shamlat Deh and that Amrit had been shown as co-sharer in it. It was also asserted that Indraaj was sanctioned mutation of inheritance, Ex.P14 on 09.09.1936 and after Indraaj his son, Deep Chand, inherited the suit property and after the death of Deep Chand the plaintiff-appellant and his brothers succeeded to the suit property vide mutation of inheritance Ex.P13 dated 04.04.2001 and, thus, the plaintiff-appellant is the owner-in-possession of the suit property. According to the learned counsel, Amrit son of Ram Rattan was owner-in-possession of Khasra No.14056 and its Gosa and after the death of Amrit the suit property was inherited by his son Naubat and after the death of Naubat it was inherited by Indraaj, grand father of the plaintiff-appellant, and finally devolved upon the plaintiff-appellant and his brothers.

The counsel for the plaintiff-appellant has not been able to dislodge the findings recorded by the Courts below that Amrit was only an occupier over the suit property and that the title remained vested in favour of the Gram Panchayat of village Chhara and, thus, the status of Amrit, at best, over the suit property was equivalent to that of a tenant. Further, the mutation of inheritance Ex.P14 shows that after the death of Naubat son of Amrit his share had devolved upon Indraaj the grandfather of the plaintiff-appellant. This document further records that Indraaj sold his *Haq Shamlat* in favour of one Deegram. The title of the suit property remained vested in the Gram Panchayat of village Chhara. This document does not further the stand of the plaintiff-appellant. The learned counsel has also

not been able to show how the tenancy of Amrit could be said to have been inherited by the ancestor of the plaintiff-appellant. The lower Appellate Court placed reliance upon Section 59 of the Punjab Tenancy Act, 1887 to hold that the plaintiff-appellant had failed to produce any evidence to show that his common ancestor and that of Naubat/Amrit were ever having possession over Khasra No.3744 and in this scenario it was reasonable to hold that the said common ancestor never occupied the Khasra No.14056 and thus the tenancy of Amrit over the suit property would have reverted to the owner i.e. the *Shamlat Deh* of the Gram Panchayat of village Chhara.

The learned counsel for the plaintiff-appellant also pressed into service the demarcation report Ex.PW2/A and site-plan Ex.PW2/B which were effected during the proceedings of the earlier Civil Suit No.254/2001 filed by the plaintiff-appellant for grant of prohibitory injunction. However, the counsel could not wriggle out of the finding that the said earlier civil suit was dismissed and that the Trial Court had held that the said demarcation report was not as per law and the same could not be relied upon. A faint argument was raised that the Courts below ought to have ordered preparation of a fresh demarcation report. However, the plaintiff-appellant cannot put the onus of proving his case upon the Court and ought to himself have taken necessary steps as per law to get a fresh demarcation report prepared in case he felt it appropriate. The Courts below cannot be faulted on the laxity by the plaintiff-appellant.

On behalf of the plaintiff-appellant it has also been argued that the Courts below have wrongly dismissed the suit on the ground of limitation and that as per Article 65 of the Limitation Act, 1963 his suit was within limitation. However, judgements of the Courts below show that the plaintiff-appellant has failed to disclose the time or approximate period when he was dispossessed by the defendant-respondents from the suit property. It is not possible to discern the date when the cause of action accrued in favour of the plaintiff-appellant. Article 64 of the Limitation Act, 1963 postulates that in a suit for declaration and injunction in respect of claim for immovable property the period of limitation is 12 years from the date of dispossession. However, the plaintiff-appellant has been unable to disclose the date of his dispossession and as such his suit was clearly barred.

No other point was urged and argued.

Finding no error or illegality in the judgements and decrees passed by both the Courts below, the present regular second appeal is dismissed.

(ALKA SARIN)
JUDGE

12.03.2020
parkash

NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO