

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.389 of 2021(O&M)
Date of Decision: 01.04.2021

Surender

...Petitioner

Versus

Rajender and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate,
for the petitioner.

Mr. B.R.Mahajan, Senior Advocate, with
Mr. R.A.Yadav, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

The plaintiff-petitioner has filed the revision petition under Article 227 of the Constitution of India with a prayer to set aside the order dated 15.02.2021 passed by the learned Additional District Judge, Gurugram, whereby the temporary injunction granted by the trial Court has been vacated. The plaintiff filed the suit for declaration with consequential relief of permanent injunction claiming that he has become owner by way of adverse possession of land measuring 19 kanals 16 marlas as the defendants-respondents have never visited or taken care of the suit land.

The defendants contested the suit by taking a stand that they are in possession of the property and the plaintiff was only allowed to look after the land while the cultivating possession continued with them. It was

further pleaded that on 19.01.2009, the defendants got the land demarcated from the revenue officials in the presence of Rajender son of Shah Mal, the brother of the plaintiff. Still further, the land in dispute was sought to be acquired vide a notification dated 31.12.2013 and the defendants, who are owners in possession, filed objections under Section 5-A of the Land Acquisition Act, 1894. Ultimately, the defendants were successful in getting the land released from the acquisition. The defendants further pleaded that the plaintiff by playing fraud upon the department of Dakshin Haryana Bijli Vitran Nigam Limited, has obtained an electricity connection of domestic supply on the basis of an application dated 29.12.2019, but the cultivating possession still continues with the defendants.

As already noticed, the learned trial court directed the parties to maintain status quo as to possession, however, the learned first appellate court by a detailed judgment set aside the same after finding that there is no material to prove that the plaintiff is in settled possession of the land in dispute.

Heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel representing the plaintiff-petitioner submits that the learned first appellate court has erred in recording the finding that the plaintiff has failed to prove his settled possession. He contends that the defendants themselves have admitted the possession of the plaintiff in paragraph 8 of the preliminary objections of the written statement. Learned counsel further submits that the first appellate court has not recorded any finding that the plaintiff is not in possession. He further submits that the first appellate court has no jurisdiction to interfere unless it finds that the

order passed by the trial court suffers from perversity.

Per contra, Sh. Baldev Raj Mahajan, Senior Advocate assisted by Mr. R.A.Yadav, Advocate, contends that the possession of the plaintiff was never admitted. He submits that the plaintiff was only requested to take care of the land but cultivating possession of the land continued with the defendants. He further submitted that as per the revenue record which has raised a presumption of correctness per se, it is the defendants who are in possession. He further submits that as per the khasra girdiwari the land is vacant and therefore, there is no entry in the revenue record in favour of the plaintiff. He, hence, submits that the possession of the vacant land follows the title. He further submits that the plaintiff has not produced any electricity bill or J-form to prima-facie prove his possession. He further while elaborating his argument submits that the defendants admittedly purchased the suit property vide sale deed dated 14.01.2004 from Sh. R.P.Kapoor. One Rajpal started litigation by alleging that the sale deed has been executed in order to defraud the creditors. The aforesaid suit has been dismissed on 23.10.2007 and thereafter the defendants got the land demarcated in the presence of the plaintiff's brother. In 2013, the land was sought to be acquired and it was the defendants who filed objections under Section 5-A of the Land Acquisition Act, 1894. It was with the efforts of the defendants, the land was not acquired. He further drew the attention of the court to the copies of the jamabandi of the year 2000-01, 2005-06. In the year 2001, Sh. R.P.Kapoor was recorded as the owner in possession, whereas in the jamabandi for the year 2005-06, Rajender and Mahabir-the defendants are recorded as owners in possession.

Before evaluating the arguments of learned counsel for the

parties, it is appropriate to note that the main plank of argument of learned counsel for the plaintiff is based upon the alleged admission of the defendants acknowledging the possession of the plaintiff on the concerned property. Learned counsel has referred to paragraph 8 which is extracted as under:-

“8. That the present suit has been filed by the plaintiff to grab the valuable land of the answering defendants no. 1 and 2 which the plaintiff has absolutely no right, title or concern of any kind pertaining to the suit land, It is to state here that the said land has been duly recorded on the name of the answering defendants no. 1 and 2 in terms of Jamabandi for the year 2005 - 06, and in the Column of Cultivation also it has been Self Cultivated and there is no entry as regard to any possessory right of the plaintiff. Similarly, the Khasra Girdawari entries are also on the name of answering defendants no. 1 and 2. These both the documents i.e. Jamabandi and Khasra Girdawari are duly maintained by the revenue officials in terms of the revenue law. The entries in the Khasra Girdawari as regard to the cultivation are being entered twice in a year and had there been any adverse possession as alleged by the plaintiff, the Khasra Girdawari should have been reflecting the name of the plaintiff. As such, the plea of adverse possession contrary to the revenue record which is being updated on every six months as Khasra Girdawari and every 4 - 5 years Jamabandi. These documents clearly goes to show that the answering defendants no. 1 and 2 are owners in possession and the plaintiff has absolutely no legal and legitimate right to the said land.

In fact, sometime ago, the father of the plaintiff who was the resident of Village Kadarapur requested the answering defendants no. 1 and 2 for looking after the land, and for that purpose, the plaintiff was allowed to look after the land, however the cultivation has continued to be recorded on the name of answering defendants no. 1 and 2. As such, the plaintiff has even not acquired the status of cultivator or kashtkar what to consider about the ownership by way of adverse possession. The copy of Jamabandi and Khasra Girdawari are attached as Annexure D1 and D2.

Further, there arose a dispute of boundaries pertaining to suit land, as a result of which the answering defendants no. 1 and 2 moved an Application on 14.01.2009 before the Tehsildar Sohna, upon the said Application the Retired Girdawar namely Gangaram was appointed as Local Commissioner to demarcate the

land and accordingly the said Local Commissioner issued Notice to Halka Patwari Kadarapur for effecting the Demarcation on 19.09.2009. The copies of Application and Notice are attached as Annexure D3 and D4. On the basis of the said Notice, the Demarcation was carried out on 19.01.2009 upon which one Rajender S/o Shahmal who is the brother of the present plaintiff was also present. The Local Commissioner Sh. Gangaram submitted his Report of Demarcation, and it is at that point of time, the fencing of the land was undertaken by the answering defendants no. 1 and 2. As such, the plaintiff has absolutely no right, title and interest over the said land in view of the said demarcation got done by the answering defendants no. 1 and 2. The copies of Recording of Presence and Report of Local Commissioner are attached as Annexure D5 and D6.

That there was a litigation over the said land filed by one Raj Singh S/o Shri Ram, resident of Village Kadarapur against R. P. Kapur and the answering defendants no. 1 and 2. The said suit was contested by the answering defendants no. 1 and 2 and the said suit was got Dismissed on 23.10.2007. The copy of Judgment is attached as Annexure D7.

In the meantime, the said land was Notified for Acquisition vide Notification No. 12644 LAC(G) NTLA-2013/1382 Dated 31.12.2013 for Residential Sector - 67 of Gurugram. That the answering defendants no. 1 and 2 as owners in possession have filed the Objection on 05.02.2014 before the Land Acquisition Collector Gurugram. The copy of the said Objection is attached with this Written Statement as Annexure D8, and copy of the Rpat Rojnamcha Dated 03.02.2014 which was obtained by the answering defendants no. 1 and 2 is also annexed herewith this Written Statement as Annexure D9.

That it was the answering defendants no. 1 and 2 who were recorded owners in possession of the land and they have taken legal and lawful steps to seek the Release of Land from Acquisition, and which has subsequently been Released also by the Acquiring Agency. That the answering defendants no. 1 and 2 have also drawn certified copy Sale Deed pertaining to the said land from Sub Registrar Sohna on 12.06.2008, copy of which is attached herewith as Annexure D10 which falsify the claim of the plaintiff that he is in adverse possession because drawing of documents pertaining to the land itself shows that the answering defendants no. 1 and 2 have been maintaining their ownership and possessory rights records from the concerned Sub Registrar as well as on the spot.

That the answering defendants no. 1 and 2

got it done a bore for Tube-wel in the year 2013 'and purchased the motor of Texmo company of 7.5 horsepower from the Electric Motor Store.

That the plaintiff by playing fraud upon the Department of DHBVNL obtained a Electric Connection of Domestic Supply on the basis of Application Dated 29.12.2019 of 6 KVA Load. The said connection was obtained on the land bearing Rectangle No. 5, Killa No. 24, Rectangle No. 7, Killa No. 3/2/1, 4/1, 4/3, 5, 6/1 which was recorded on the name of father of the plaintiff and has also obtained the Affidavits of other co-sharers in this regard. Now the plaintiff is alleging that he is using that connection and claiming that he has obtained electric connection over the land of the answering defendants which is factually incorrect and in fact, it is a serious violation of the Rules of DHBVNL that once a person is obtained a connection for a particular land/premises, he cannot shift the said connection without necessary fee and permission, and he shift and use at other place, the same is illegal and liable to be prosecuted. The copy of the Application for Electric Connection Dated 29.12.2019, Certificate of Site Verification, copy of Jamabandi and Mutation and copy of Affidavit of other co-sharer are attached with this Written Statement as Annexure D11 (Colly.).

That after knowing the intention of the plaintiff, the answering defendants no. 1 and 2 asked the plaintiff that his services are no longer required and there is no right for the plaintiff for looking after the land of the answering defendants no. 1 and 2. When this fact was told to the plaintiff by the answering defendants no. 1 and 2, the plaintiff got wild and alleged that he is the local resident of village Kadarapur and he cannot be removed from the land which he has been looking after for quite sometime. That the answering defendants no. 1 and 2 are the law abiding citizens, as a result of which an Application Dated 18.10.2020 was presented to the S.H.O. Sector -65, Gurugram, the copy of which is annexed as Annexure D12. In fact, the said land was cultivated by the answering defendants no. 1 and 2 in the presence of the plaintiff, but the plaintiff with his bad intention has tried to create a quarrel on the spot.

That upon the application of the answering defendants no. 1 and 2, the plaintiff and few other persons were called by the S.H.O./Investigating Officer upon which the Investigating Officer/A.S.I. Suresh Kumar visited the spot and the plaintiff told the police that he is cultivating the land for last three years. The plaintiff also admitted that the answering defendants no. 1 and 2 are the owners of the land. The plaintiff came out with a defence before the police that he has got erected the fencing to protect the crops from the stay

cattles. The plaintiff also admits that the Tube-well installed on the land belongs to the answering defendants no. 1 and 2. The plaintiff demanded Rs. 73,000/- from the answering defendants no. 1 and 2 in respect of angel and barbed wire fencing which alleged to have been spent by the plaintiff. The said amount of Rs. 73,000/- was paid by the answering defendants no. 1 and 2 and a Receipt to that effect was also made. The copies of the said Receipt of Rs. 73,000/- and Report of police in this regard are attached herewith as Annexure D13 and D14.

In view of the facts the case of the plaintiff for adverse possession is totally bad in the eyes of law, the same deserves to be dismissed.”

Learned counsel, in fact, wants to read sub-para(2) in isolation.

He contends that the defendants have admitted that the plaintiff was in possession of the land. It is apparent that, no doubt, the defendants have stated that the plaintiff was allowed to look after the land, however, in the same sentence it has been pleaded that the cultivation continues to be recorded in the name of the defendants. In the very next sentence, the defendants have pleaded that the plaintiff has not even acquired the status of a cultivator.

Still further, it is not in dispute that there is not even a single entry in the revenue record showing the plaintiff to be in possession. The plaintiff claims to have perfected his title by open and hostile possession for a continuous period of more than 12 years. However, the plaintiff has neither produced the electricity bill nor produced any other relevant material to prove his possession.

It is well settled that before the plaintiff can be granted an injunction from dispossession he has to *prima facie* prove that he is in the settled possession, particularly when he is seeking injunction against the owners. In the present case, the plaintiff has failed to *prima facie* prove his possession.

As regards the next argument of learned counsel for the plaintiff, it may be noted that no doubt the appellate court has limited jurisdiction to interfere, however, once the appellate court finds that the trial court has not adverted to the material available on the file, then the orders suffer from a patent error and the appellate court is not debarred from interfering. Still further, the plaintiff claims to have perfected his title by way of adverse possession. In other words, he is asserting his open and hostile possession. However, he has not pleaded as to how he entered into possession. Learned counsel for the respondent has produced on file copies of khasra girdwaris for the crop Kharif-2011. It is the defendants, who are recorded in self-cultivation. In Kharif-2011, the land was vacant. However, as per khasra girdawari for the crops Hadi-2012, Kharif-2012, Hadi-2013, Kharif-2013, Hadi -2014, the land is shown to be under cultivation. Thereafter, from the crop Kharif-2014, the land is again recorded to be vacant. But the plaintiff is nowhere in picture.

Keeping in view the aforesaid facts, the plaintiff has failed to make out a case for the court to interfere in the order passed by the learned first appellate court.

Hence, dismissed.

01st April, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO