

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2641-2016 (O&M)
Reserved on: 02.08.2022
Date of decision: 08.08.2022

HARI KISHAN THAPAR AND ORS.

..Petitioners

Versus

PAWAN KUMAR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ramesh Sharma, Advocate
for the petitioners.

Mr. Abinashi Singh, Advocate
for respondent No.1 to 3.

Mr. Angel Sharma, Advocate
for respondent No.6.

Mr. Naresh Gopal Sharma, Advocate
for respondent No.9.

Mr. Karan Khehar, Advocate
for respondent No.10.

ANIL KSHETARPAL, J.

1. The plaintiffs assail the correctness of the judgment passed by Civil Judge (Junior Division) Kharar on 06.01.2016, while dismissing their suit for restoration of possession filed under Section 6 of the Specific Relief Act, 1963. The suit was filed with respect to Municipal Shops bearing No.3933 and 3944, located in Khasra No.568 within the limits of Municipal Committee, Kharar. The plaintiffs claim that they have been forcibly dispossessed by the defendants. It is the case of the plaintiffs that since 1956, they were in the occupation of the two shops as tenants under Municipal Committee, Kharar. They have regularly paid the rent to the Municipal Committee upto the year 1989. The plaintiffs claim that under the policy enabling the occupants to purchase the property in their possession,

the plaintiffs applied and deposited the transfer amount with the Municipal Committee vide receipts No.69, dated 06.07.1991, and 78, dated 11.07.1991.

2. Defendant No.1 has submitted that he, along with other co-owners, have entered into an agreement to sell with defendant No.4 and sale deed in favour of defendant No.4 has been executed. The Municipal Committee did not deny the assertions made in the plaint. Defendant No.10, while filing the written statement, claims that the parties entered into a settlement, a copy whereof has been annexed as Annexure P-4 with the plaint and he is a bonafide purchaser.

3. In order to prove their case, the plaintiffs examined as many as 11 witnesses. PW-5 Sh. Joga Singh, Clerk, House Tax Branch, Municipal Committee, Kharar, appeared in evidence and stated that Shop No.3933 was previously occupied by plaintiff No.1's father and subsequently, by the plaintiff No.1. He also deposed that predecessor in interest of defendant No.2 was in occupation of the shop and an entry to that effect is in the record at Sr. No.589. Sh. Sajan Singh (predecessor in interest of plaintiff No.2) was in occupation of Shop No.3934. The plaintiffs also examined Sh. Rajbir Singh, neighbouring shop keeper and PW-11 Sh. Dharam Singh, Kanungo. Plaintiff No.1 also stepped into witness box.

4. On the other hand, Sh. Sukhwinder Singh appeared as DW-1 and claimed that a settlement was arrived at and Sh. Hari Kishan Thapar (plaintiff No.1) was held entitled to shop measuring 6 feet X 10 feet. Defendant No.10 appeared as DW-2 and claims that he does not have any knowledge but he is a bonafide purchaser for valuable consideration. He feigned ignorance whether the plaintiffs were in possession or not.

5. The trial Court dismissed the suit on the following grounds:-

1. Multiple suits have been filed and a suit for mandatory injunction filed by plaintiff No.1 is pending.
 2. The shops have ceased to exist.
 3. Defendant No.1 is in possession since 2010, whereas, the suit was filed on 24.04.2010.
6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.
7. It may be noted here that after hearing the arguments of the learned counsel representing the parties, this Court has come to a conclusion that the trial Court has not only miserably failed to decide the case in accordance with law but has also overlooked the material evidence which has been brought on record.
8. It may be noted here that predecessors of the private defendants filed case No.367 of 1967, titled as “Chet Singh and other Vs. Municipal Committee, Kharar”, for grant of decree of declaration that they are co-owners in possession of the land and also sought possession of the land marked as 'ABCD'. In the aforesaid case, Sh. Devki Nandan (plaintiff No.1's father) and Sh. Sajan Singh (predecessor in interest of plaintiff No.2) were defendants. The aforesaid suit was decreed on 03.02.1975. In the execution petition, the objections filed by plaintiff No.1 were dismissed, however, subsequently the Court came to the conclusion that the decree dated 03.02.1975, has been obtained by playing fraud with the Court. The relevant finding of the Executing Court in order dated 03.08.2002, is extracted as under:-

“So, in these circumstances, I hold that at the time when the execution was filed a fraud was played upon the court as Kulwant Singh and his sons wrongly stated themselves to be representative of Anar/Amar Kaur (deceased) when they were having no relations with her and now from the facts and circumstances which have been discussed in detail above, I have come to the conclusion that Kulwant Singh and his sons as per their

own affidavit were entitled to 20/95 share in the decree regarding which they are seeking execution. They had already sold 18 marla out of Yellow Coloured portion and are having possession of Red coloured area, as discussed in detail above. Here, I would also like to say that Kulwant Singh and his sons, now represented by one Harmesh Kumar, their attorney, have tried to mis-lead the Court. The area which comes to the decree holders is 20 marla which includes Red and Yellow portion. Out of the Yellow portion these decree holder had already sold 18 marlas of land and red portion is already in their possession as per the statement of Kulwant Singh. Now, they tried to play game by saying that they are entitled to 20 marlas of land out of Yellow portion but here I would like to say that the decree is of 30 marlas which includes Yellow as well as Red portion. These decree holders cannot claim their 20 marlas only out of the Yellow portion whereas they are in possession of red portion already. So, in this way these decree holders are already in possession of more area than to which they are entitled. The heirs of anar/Amar Kaur had not claimed anything and had prayed for dismissal of the present execution. Therefore, in these circumstances, the present execution is dismissed being satisfied. File be consigned to record room.”

9. It may be noted here that there is a typographical mistake in the paragraph in which the Court has inadvertently mentioned that the share of the decree holder comes to 30 marlas, whereas, in fact, it is 20 marlas.

10. The correctness of the afore-extracted order passed by the Executing Court was upheld on 18.02.2009 by the High Court in Civil Revision No.1202 of 2003. The plaintiffs claim that defendant No.1 to 4, on 20.01.2010, broke the rear wall of the shops. They approached the Police but no action was taken. The defendants repeated this act on 20.02.2010, forcing the plaintiffs to file a suit for grant of permanent injunction in which notice was issued. However, they were completely dispossessed on 28.02.2010 and on account of threats and police pressure, they were forced to enter into a compromise Ex.P-4. Thus, the plaintiffs withdrew the suit for injunction and filed the present suit on 28.04.2010. It may be noted here that the defendants do not dispute that the plaintiffs were in possession.

Sh. Sukhwinder Singh DW-1 admits that as per the settlement, plaintiff No.1 was held entitled to shop measuring 6 feet X 10 feet, whereas, DW-2 (defendant No.10) claims to be the owner. He has already reconstructed the shops.

11. The learned counsel representing the parties admit that no suit for grant of mandatory injunction with respect to the suit property is pending between the parties. Thus, the trial Court was factually incorrect in making observation on that account.

12. The next reason assigned by the Court is equally erroneous. The Court has erred in observing that since now the shops do not exist, therefore, the suit cannot be decreed. It may be noted here that till February, 2009, the defendants were litigating before the High Court. Having failed therein, they forcibly dispossessed the plaintiffs. The suit was filed within a period of less than two months from the date of forcible dispossession. In these circumstances, the trial Court committed material irregularity in turning a blind eye towards the facts which stand proved on the file. The trial Court also erred in overlooking the findings of the Executing Court recorded in the order dated 03.08.2002, in which the predecessors of the defendants were party and the decree was obtained by fraud when infact, the predecessors of the defendants had no right, title or interest in the suit property. The aforesaid findings of the Executing Court stand affirmed by the High Court on 19.02.2009.

13. The next reason assigned by the trial Court suffers from perversity as the Court declined to grant relief to the plaintiffs on the ground that defendant No.1 is in possession since the year 2010, without comprehending that the suit was filed in April, 2010, itself.

14. In the present case, apart from the findings of the Court in order

dated 03.08.2002, which was affirmed by the High Court on 18.02.2010, the plaintiffs proved their possession by examining Municipal official Sh. Joga Singh, who produced the relevant record from the Municipal Committee in order to prove that these two plaintiffs were in occupation of the respective shops as tenants under the Municipal Committee. It is also admitted by the Municipal Committee that the applications for purchase of the shops, by the respective tenants, were submitted and they deposited the amount vide receipt No.69 and 78 on 06.07.1991 and 11.07.1991, respectively.

15. The learned counsel representing the respondent contends that there is no clarity with regard to the description of the premises or its demarcation. This Court has considered the submission, however, finds no merit therein. The plaintiffs, while filing the suit, have claimed possession of Municipal Shops No.3933 and 3934, located in Khasra No.568. It has come in evidence that both the shops were 10 feet X 10 feet, each.

16. The construction, if any, during the pendency of suit shall be governed by rule of *lis pendens*. Even, if the defendants, after taking forcible possession, have demolished and reconstructed the shops, still they are bound to restore back the possession, particularly when they have not only taken the law in their hands but have also lost the litigation upto the High Court.

17. Consequently, the judgment and decree passed by the trial Court is set aside while allowing the revision petition. The suit filed by the plaintiffs shall stand decreed.

18. All the pending miscellaneous applications, if any, are also disposed of.

08th August, 2022

(ANIL KSHETARPAL)

Ay

JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No