

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-674-2022 (O&M)

Date of decision: 10.05.2022

Santosh Devi and another

....Appellants

Versus

Rajender Parsad Gupta and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajaivir Singh, Advocate for the appellants

Mr. Akshay Jindal and
Mr. Sameer Ahluwalia, Advocates for respondent no.1

Mr. Parveen Sharma, Advocate for respondent no.2

ANIL KSHETARPAL, J (Oral)

Defendant No. 1 and 3 assail the correctness of the judgement and the decree passed by the learned First Appellate Court. The trial court dismissed the suit filed by the plaintiffs (respondents herein) for grant of decree of permanent injunction restraining the defendants from demolishing the house which is situated within the Abadi deh whereas the First Appellate Court has reversed the decree.

Some facts are required to be noticed. A pedigree table would facilitate the understanding of the relationship between the parties:-

Bullu Mul

Suraj Bhan

Ram Kishan

- 1.Mahinder Parsad
2.Jagdish Parsad
3. Rajender Parsad Gupta (Plaintiff)

The plaintiff Rajender Parsad Gupta, resident of Delhi, filed a suit for grant of decree of permanent injunction to restrain the defendants from interfering in his possession and for restraining the defendants from demolishing the house in question located in village Baroli, Tehsil and District Panipat. It is the case of the plaintiff that Sh.Bullu Mal was permanent resident of village Baroli and he constructed a house in question within the Abadi deh of the village. Bullu Mal died in the year 1958 and on his death, his two sons namely Suraj Bhan and Ram Kishan became owners of half share each of the house. Sh. Suraj Bhan is stated to have died in January, 1960. The plaintiff claims that after the death of Suraj Bhan, he alongwith his brothers inherited the property. It is the case of the plaintiff that remaining half share of the property is owned and possessed by Ram Kishan. Both the brothers alongwith their respective families shifted to Delhi and when he came back, he found that their house is being demolished. The defendants contested the suit and submitted that the house in question belongs to him and defendant No. 4 (Ram Kishan son of Bullu Mal) had some immovable property which he has sold and now defendant no.4 or the plaintiffs have no right, title or interest in the property.

The property in dispute is situated in Abadi deh therefore, there is no documentary evidence to prove the title of the plaintiff. Learned trial court, on the appreciation of evidence, dismissed the suit whereas the First Appellate Court reversed the judgement and the decree. On a careful reading of the judgment passed by the learned First

Appellate Court, it is evident that the court has primarily recorded two reasons for reversing the judgement:-

a) testimony of DW 1 Mahender Parsad is self contradictory with respect to absence of writing of alleged ownership.

b) once the defendants claim that they purchased the property from Ram Kishan, the title of the appellant is ipso facto established.

Heard learned counsel representing the parties at length and with their able assistance perused the judgment passed by the courts below and the photocopy of the record, which was produced by the learned counsels representing the respective parties. Sh. Mahender while appearing in evidence has admitted that Ram Kishan had an ancestral house, which had fallen down after he shifted to Delhi. He further admits that the family of Ram Kishan visits the village in order to pay obeisance to their “Kul Devta” (Deity).

From the pedigree table, it is evident that at the most the appellant has admitted that Ram Kishan had an ancestral house in the village. That itself is not sufficient to conclude that Suraj Bhan, brother of Ram Kishan, was also owner of the aforesaid house. In the considered opinion of the Court, the First Appellate Court has erred in drawing the aforesaid presumption.

With regard to the second reason recorded by the 1st appellate court, it may be noted here that Mahinder (appellant) has only admitted that the family of the plaintiff do belong to the village.

Learned counsel representing the respondent admits that there is no other

evidence to prove either the possession of the plaintiff or his ownership. The plaintiff has not produced any evidence to prove that they used to reside in the house in question at any point of time.

Before a decree for permanent injunction is granted, the court is required to record a finding on the basis of evidence produced. Such decree operates perpetually against the defendants. In such circumstances, the court is expected to appreciate the evidence in proper prospective and thereafter record a finding. It is also well settled that the plaintiff is required to stand on his own legs. Here is a case where the plaintiff has not produced any evidence except oral evidence to claim ownership. Admittedly, they are not residing in the village for quite some time. Therefore, he is not in possession.

Keeping in view the aforesaid discussion, the conclusion is irresistible. The learned First Appellate Court has committed an error in reversing the judgement and decree passed by the learned trial court . In view thereof, the judgement and decree passed by the First Appellate Court is set aside and that passed by the learned trial court is restored. However, the plaintiff, if so advised, may file a suit for declaration of his title and thereafter claim relief of possession.

The Regular Second Appeal stands allowed.

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

10.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE