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

**RSA-414-2021 (O&M)
Reserved on 08.08.2022
Date of decision : 10.08.2022**

Murti Shri Vishnu Avtar Baba Ram Dev & Anr.Appellants

Versus

Baljit Singh & OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Hargobinder Gill, Advocate for the appellants.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellants against the judgement and decree of the lower Appellate Court whereby their suit for possession and mandatory injunction has been dismissed. The Trial Court had decreed the suit in favour of the plaintiff-appellants.

The plaintiff-appellants filed a suit for possession of the suit property marked as ABCDEF in the site plan shown in red colour from the defendant-respondents on the grounds that the suit property was the ownership of the plaintiff-appellant No.1 and in the mid of 2012 the defendant-respondents had illegally encroached upon the suit property and had raised construction of toilet, khurli, shed and installed a toka machine forcibly and illegally. In the suit the possession of the suit property was sought from the defendant-respondents along with the relief of mandatory injunction directing them to demolish the khurli, toilet, temporary shed and remove the toka machine.

In their written statement the defendant-respondents denied the title of the plaintiff-appellants over the suit property and prayer was made for dismissal of the suit. It was also contended that the matter involved in the present suit had already been decided by the Court of competent jurisdiction and as such it could not be agitated through the present suit. The defendant-respondents further stated that there was no ground for removing the construction raised by their father, Nathu Ram, on his own land. Additional objections regarding locus standi, cause of action, concealment of material facts, suit being not maintainable, estoppel, mis-joinder and non-joinder of necessary parties and the suit being barred under Section 11 and Order 2 Rule 2 CPC were raised.

The plaintiff-appellants filed a replication to the written statement wherein the facts as stated in the plaint were reiterated and those in the written statement were denied. The Trial Court framed the following issues :

1. Whether plaintiff is entitled to possession of suit property as prayed for ? OPP
2. Whether plaintiff is entitled to mandatory injunction directing defendants to demolish khurli, latrine, gohara etc. as prayed for? OPP
3. Whether suit is barred by law of res-judicata? OPD
4. Whether suit is not maintainable in its present form? OPD
5. Relief.

On the basis of the pleadings of the parties and the evidence produced, vide judgement and decree dated 15.04.2017 the Trial Court

decreed the suit of the plaintiff-appellants holding inter-alia that *“it is proved that defendants are owners of only 78 sq. yards area over which they have constructed their house and the remaining area encroached upon by them, certainly belongs to plaintiffs”*. The Trial Court also found that the suit of the plaintiff-appellants was not barred by limitation or res-judicata. It was held that the plaintiff-appellants *“entitled to possession of property marked as ABCDEF in red colour in site plan Ex.P8 and Ex.P8/A being part and parcel of property belonging to Murti Shri Vishnu Avtar Baba Ram Dev installed in Mandir Vishnu Avtar Baba Ram and Dharamshala Rewarian, situated at Rewarian Mohalla, Nabha District Patiala. Defendants are directed to demolish/remove khurli, latrine, gohara, temporary shed etc. therefrom and to deliver vacant possession of suit property to the plaintiffs within a period of two months from the date of decree”*.

Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by the defendant-respondents and the same was accepted vide impugned judgment and decree dated 04.03.2021. The lower Appellate Court inter-alia held that :

“19) The plaintiffs have alleged that the plaintiff no.1 is the juristic person and Idol of Murti Shri Vishnu Avtar Baba Ram Dev is situated there. The plaintiff no.2 is managing the affairs of the said temple and Dharamshala being President of the Rewarian Community. In this regard the proceedings of the meeting conducted by the Baradari and the resolution passed by the Rewarian Baradari are produced as Ex.P1 and Ex.P2. It has come on record that no such

Committee as alleged by plaintiff no.2 is registered with any authority and the original resolution has not come on record. It is not proved that plaintiff no.2 has any concern with plaintiff no.1.

20) Furthermore, the plaintiffs/respondents are seeking the possession of the suit property, which is stated to be marked as ABCDEF in the site plan shown in red colour but no dimensions of the said property as well as its area have been mentioned in the plaint. So, the description of the suit property the possession of which is claimed is vague. Even the said site plan Ex.P8 is prepared by a private draftsman. No reliance upon the same can be placed.

21) Further the plaintiffs/respondents have filed the suit on the basis of their title on the suit property, but no title deeds have been proved on record. There is no document proved on record that plaintiff no.1 is the owner of the suit property, the possession of which is claimed.”

It was further held by the lower Appellate Court that :

“When the plaintiffs have failed to prove their title on the suit property how the learned Trial Court can held that the area more than 78 sq. yards in possession of the defendants/appellants belongs to the plaintiffs. The defendants/appellants in their written statement have not taken any plea of adverse possession but the

witnesses of the plaintiffs have stated the defendants/appellants to be in adverse possession of the suit property. If the defendants/appellants are in adverse possession of the suit property that also does not mean that the plaintiffs are owner of the same and have title over the suit property. Therefore, the finding of the learned Trial Court in para no.28 and while deciding issue no.1 & 2 are also based upon conjectures and surmises and the findings given by the learned Trial Court on issues no.1 and 2 are perverse and against the facts and evidence of the case”.

Hence the present regular second appeal by the plaintiff-appellants.

Learned counsel for the plaintiff-appellant has contended that the lower Appellate Court has erred in reversing the findings recorded by the Trial Court and in dismissing the suit of the plaintiff-appellants. As per counsel, the evidence on the record proved that the plaintiff-appellant No.1 was a juristic person and the plaintiff-appellant No.2 could file the suit and the present appeal on its behalf. He also submitted that the plaintiff-appellant No.1 was the owner of the suit property which had been encroached by the defendant-respondents. He also drew the attention of the Court to the decision dated 17.12.2010 given by this Court in RSA-4825-2010 whereby the appeal of the father of the defendant-respondents was dismissed.

Heard.

The counsel for the plaintiff-appellants has been unable to satisfy this Court as to how the plaintiff-appellant No.2 could claim to represent any Committee so as to file the suit and the present appeal for the

plaintiff-appellant No.1. There is nothing on the record that any Committee is in existence which Committee can sue or be sued in its name. Even the photocopies of the resolutions attached with the present appeal are on plain paper and do not throw any light on the existence of a juristic Committee. Further, the counsel for the plaintiff-appellants has been unable to show from the record that the plaintiff-appellants had any right, title or interest in the suit land. There is no title deed or revenue record forthcoming. The reliance is only upon the earlier litigation which culminated in the passing of judgement dated 17.12.2010 in RSA-4825-2010. However, the said decision does not come to the aid of the plaintiff-appellants as the said decision does not hold the plaintiff-appellants to have title over the suit land. In any event the said earlier decision was given in a suit for injunction without the title of the suit land being determined. So when the plaintiff-appellants have not been able to satisfy their right, title or interest in the suit land they cannot seek possession of the same or seek a mandatory injunction against the defendant-respondents qua the same. No doubt the sale deed Ex.D1 produced by the defendant-respondents is with regard to an area measuring 78 sq. yards only while they claimed themselves being owners of 125 sq. yards. But the weakness in the case set-up by the defendant-respondents will not automatically strengthen the case as set-up by the plaintiff-appellants. Just because the defendant-respondents have been able to show their ownership over land measuring 75 sq. yards does not mean that the plaintiff-appellants are owners of the remaining land beyond this 75 sq. yards. Learned counsel for the plaintiff-appellants has also not been able to show how the suit was maintainable in 2014 when the witnesses of the plaintiff-appellants have themselves stated that the defendant-respondents are in

possession of the suit land for the last more than 25 years. It seems that after the dismissal of RSA-4825-2010 on 17.12.2010, the plaintiff-appellants became wiser and decided to file the present suit for possession and mandatory injunction. Though the counsel for the plaintiff-appellants vehemently contended that the judgement and decree of the lower Appellate Court was against the record, he could not point to any cogent and convincing evidence which had been mis-read by the lower Appellate Court.

No other argument has been raised by learned counsel for the plaintiff-appellants. No question of law, much less any substantial question of law, arises for determination in the present case.

In view of the above, I do not find any illegality and infirmity in the judgment and decree passed by the lower Appellate Court. The present regular second appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

10.08.2022
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(ALKA SARIN)
JUDGE