

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

RSA-3106-2018(O&M)

Date of decision:-30.11.2022

Ram Singh and another

...Appellants

Versus

Jhanda Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Deepak Goyal, Advocate
for the appellants.

H.S. MADAAN, J.

1. In nutshell, facts of the case are that plaintiffs Jhanda Singh, Karamjit Singh sons of Sh.Jang Singh, Tarsem Singh son of Sh.Niranjan Singh and Smt.Parsini Devi widow of Sh.Jang Singh, resident of village Hassanpur (since died) represented by her legal representatives Jhanda Singh – son, Karamjit Singh – son, Jeet Kaur – daughter and Raj Kaur – daughter, had brought a suit against Ram Singh @ Bholu son of Sh.Harbhajan Singh, Jagtar Singh son of Sh.Arjan Singh, both residents of their village, seeking a decree for

possession of property measuring 0 Kanal 9 Biswas comprised in Khata No.377/529, khasra No.1469/0-9 situated at village Hassanpur, which is in illegal and unauthorized possession of the defendants; in addition to that craving for grant of decree for permanent injunction restraining the defendants from changing the nature and condition of the suit property by raising any sort of construction.

2. As per the version of the plaintiffs the suit property is a 'gair mumkin abadi' owned by the plaintiffs with which the defendants have no concern; the plaintiffs had constructed a shed in some part of the suit property enclosing it with a boundary wall of height up to 3-4 feet; the defendants had taken possession of the property in an illegal and unauthorized manner about one year prior to filing of the suit (suit was filed on 8.10.2012); the defendants could do so as the suit property was lying vacant as it was used for tethering of cattle; after taking wrongful possession of the suit property, the defendants started tethering their own cattle there and further they threatened to change the nature and condition of the suit property by raising construction therein, not listening to the request of the plaintiffs to hand over the vacant possession of that property to them, giving rise to a cause of action to the plaintiffs to bring the suit in question.

3. On notice, the defendants appeared and filed written statement contesting the suit raising various legal objections, on

merits contending that Sh.Jhanda Singh son of Jang Singh, Parsinni widw of Jang Singh, Babu Singh, Mukhtiar Singh, Lachhman Singh Lachhu sons of Bishan Singh were co-owners to the extent of $\frac{1}{2}$ share and Niranjana Singh son of Sunder Singh was co-owner of the remaining $\frac{1}{2}$ share in the suit property; the said owners sold off that property measuring 0 kanal 9 biswas to Nahar Singh, Jagtar Singh @ Avtar Singh (defendant No.2), both sons of Arjan Singh to the extent of $\frac{1}{3}$ share and Harbhajan Singh son of Inder Singh to the extent of $\frac{2}{3}$ share vide unregistered sale deed dated 5.1.1982, in that way, S/Sh.Nahar Singh, Jagtar Singh @ Avtar Singh and Harbhajan Singh have become owners in possession of the suit property having raised some construction thereof; Nahar Singh has since died and defendant No.1 is the son of Harbhajan Singh. According to the defendants, they have been in open continuous possession of the suit property since 5.1.1982 to the knowledge of the plaintiffs and the whole village.

As the version of the defendants goes, the shed and boundary wall around the suit property were constructed by defendant No.1 Jagtar Singh @ Avtar Singh along with Nahar Singh and Harbhajan Singh, after purchasing the suit property on 5.1.1982. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

4. The plaintiffs had filed replication to the written

statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the defendants are in unauthorised and illegal possession of the suit property, as alleged? OPP.
2. If so, whether the plaintiffs are entitled to recover the land under illegal and unauthorized possession of the defendants, as prayed for? OPP.
3. Whether possession of the defendants has ripened into adverse to the plaintiffs, as alleged? OPD.
4. Whether the defendants purchased the suit property from Lachhman Singh @ Lachhu on dated 5.1.1982, as alleged? OPD.
5. Whether suit of the plaintiffs is not maintainable? OPD.
6. Whether suit of the plaintiffs is bad for non-joinder of necessary parties? OPD.
7. Relief.

6. In order to prove their case, the plaintiffs had examined Kashmir Singh Dhindsa, Draughtsman as PW1; plaintiff No.3 Tarsem Singh got his own statement recorded as PW2 and they further examined Sh.Hardeep Singh, Deed Writer as PW3.

7. On the other hand, the defendants had examined Baldev

Singh, Ex-Sarpanch as DW1, Gora Singh as DW2, Jarnail Singh, Draughtsman as DW3, Lachhman Singh @ Lachhu as DW4 and Jagtar Singh @ Avtar Singh (defendant No.2) as DW5.

8. After hearing the learned counsel for the parties, the trial Court decided issues No.1 to 4 in favour of the plaintiffs and against the defendants, issue No.5 was decided against the defendants, issue No.6 was decided in favour of the plaintiffs and against the defendants. As a result of findings on issues, the suit of the plaintiffs was decreed and they were found entitled to possession of the suit property. The defendants were restrained from changing the nature and condition of the suit property by raising any sort of construction. This was so done vide judgment and decree dated 4.5.2015

9. Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Sangrur, which was assigned to Additional District Judge, Sangrur, who vide judgment and decree dated 27.3.2018 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

10. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court.

11. I have heard learned counsel for the appellants besides going through the record.

12. In this case, both the Courts below by proper appraisal

and appreciation of evidence and correct interpretation of law have come to the conclusion that the plaintiffs are owners of the suit property with which the defendants have no concern and the defendants are in unauthorized and illegal possession of the suit property belonging to the plaintiffs and plaintiffs are entitled to recover its possession from the defendants. While coming to this conclusion, the unregistered sale deed dated 5.1.1982 Ex.D1 set up by the defendants was rejected being an inadmissible document on account of its non- registration and as regards plea taken by defendants that they have become owners of the suit property by way of adverse possession, the said plea was also rejected holding that defendants had been unable to prove that on file and rather on one hand they were claiming themselves to be owners of the suit property and on the other coming up with a plea that they are in open hostile possession of the suit property for more than 12 years, which has ripened into ownership. Therefore, the two pleas were diagonally opposite to each other. No merit was found in the case of defendants, whereas the suit filed by the plaintiffs was found to have weightage.

13. The judgments passed by the Courts below show due application of mind to the facts and circumstances of the case proper marshalling of facts and correct understanding and use of relevant law. With concurrent findings being there in favour of the plaintiffs and against the appellants/defendants with which I find no reason to

disagree, with both the Courts having given valid and detailed reasons for arriving at the conclusion drawn, no substantial question of law or fact arises in this case.

14. Finding no merit in the present appeal, the same stands dismissed with costs.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

30.11.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No