

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

RSA-4615-2018(O&M)

Date of decision:-12.12.2022

Boota Singh and others

...Appellants

Versus

Puran Singh and another

...Respondents

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

Present: Mr.Rakesh Gupta, Advocate
for the appellant.

Mr.R.S. Dadwal, Advocate
for respondent No.1/caveator.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Puran Singh had brought a civil suit against defendants Boota Singh and four others seeking possession as owner of plot No.A/13 measuring 15 marlas situated at village Kotman, Tehsil Jagraon, District Ludhiana as fully described in the head-note of the plaint besides craving for grant of mandatory injunction directing defendant No.5 –

Punjab State Power Corporation Ltd. (hereinafter referred to as PCPCL) to remove electricity meter got installed illegally in the name of defendant No.1 in that plot and further praying that a decree for permanent injunction restraining defendants No.1 to 4 from carrying out construction in any manner in the plot by themselves or their employees, be passed in favour of the plaintiff against the defendants.

2. As per the version of the plaintiff, he is absolute owner of the plot in suit having purchased it from Government of India on 24.5.1973 for a sum of Rs.29/- only; the vacant possession of the plot had been handed over to the plaintiff in that very year and mutation was also entered and sanctioned in his name and his name stood reflected in the revenue record; the plaintiff enclosed the plot with a boundary wall and constructed his residential house in a portion of the plot besides constructing a varandah for keeping his animals; in January, 2010, defendants No.1 to 4 had approached the plaintiff requesting him to allow them to use some portion of the plot as licensees for keeping their animals on the excuse that their shed for keeping animals was under construction; the plaintiff permitted the defendants No.1 to 4 to use a portion of the plot with a clear understanding that they would use that portion for keeping their animals only and would hand over the vacant possession whenever the plaintiff required; the plaintiff had allowed defendants No.1 to 4

to use a portion of the plot in dispute as licensee without creating any interest in the property and without handing over exclusive possession to them; no rent was paid by defendants No.1 to 4 to the plaintiff and plaintiff had allowed them to use the plot on account of defendants No.1 to 4 being his close relatives; the plaintiff has been bearing the expenditure for maintenance of the plot himself; in the month of May, 2011, the plaintiff requested the defendants to vacate the portion of the plot in their possession for the reason that they had completed the construction of animal shed on the plot owned and possessed by them but the defendants refused to do so, rather they took forcible possession of the entire plot; defendant No.2 Jagir Singh threatened that since he was in police service, he would implicate the plaintiff in some false case, if he asked them to vacate the plot; the plaintiff was rather surprised to know that defendant No.1 with malafide intention to grab the property of the plaintiff had got installed an electricity meter in his name in the plot on the basis of some false and fabricated documents; the plaintiff submitted a complaint in that regard to SDO, PSPCL, Sidhwan Bet, Jagraon but the meter was not removed; a day before filing of the suit, the defendants No.1 to 4 had collected building material at the spot and tried to carry out construction on the plot; they were stopped from doing so by the plaintiff along with other persons of neighbourhood with great difficulty. Feeling threatened, the plaintiff brought the suit

in question.

3. On getting notice, defendants No.1 to 4 put in appearance in the Court and filed written statement contesting the suit raising preliminary objections that suit of the plaintiff was false and frivolous and had been filed with an ulterior motive; a previously instituted suit titled 'Kala Singh Versus Puran Singh' is already pending in the Court in which the matter in controversy is directly and substantially the same as involved in the present suit, therefore, the present suit deserves to be stayed under Section 10 CPC; the suit of the plaintiff is not maintainable and is bad for non-joinder of necessary parties since Kala Singh son of Lakha Singh of village Kot Mana has not been joined and in his absence, the suit cannot be decided effectively; the suit has not been valued properly for the purpose of Court fee and jurisdiction; the suit is bad for misjoinder of parties. On merits, the defendants contended that the house involved in the suit is in possession of Jagir Singh bearing Plot No.A/5, measuring 11 M – 5S and same is ownership of Kala Singh of village Kot Mana, Tehsil Jagraon and it was purchased by Kala Singh vide a conveyance deed dated 14.7.1975 duly executed by Tehsildar (Sales), Ludhiana for a consideration of Rs.15/-; the conveyance deed was followed by immediate delivery of possession to Kala Singh and it is Kala Singh, who is the owner of the house in suit; Kala Singh has appointed Jagir Singh defendant No.2 as his lawful

attorney vide registered power of attorney dated 27.2.1990; Kala Singh is a religious minded person and often remains of pilgrimage; in his absence Jagir Singh defendant No.2 is looking after and managing the house of Kala Singh and maintaining the same; Jagir Singh -defendant No.2 along with his family has been putting up in the house in the suit plot; an electricity meter No.1724677 was installed in the house in suit, which is in the name of defendant No.1 – Boota Singh, who is real brother of defendant No.2 Jagir Singh; the electricity meter was got illegally disconnected by the plaintiff in connivance with the power corporation officials; a legal notice has been issued to concerned PSPCL official for re-installing the meter; as far as the house of the plaintiff is concerned, the same is situated on the western side of the house of Kala Singh; the plaintiff is laying a false claim over the house of Kala Singh taking undue advantage of the fact that mutation on the basis of conveyance deed in favour of Kala Singh was inadvertently not got sanctioned by Kala Singh in revenue record; the plaintiff is also trying to take undue advantage of his name figuring in the column of ownership in jamabandi pertaining to 30/728th share in khasra No.75; the plaintiff is in possession of the house constructed by him on the area standing in his name in the revenue record at the spot, which is situated on the western side of the house of Kala Singh; the plaintiff has no concern with the house of Kala Singh, however having turned dishonest and

greedy, the plaintiff is trying to grab the house of Kala Singh by asserting his false claim through the present suit.

As regards the conveyance deed mentioned by the plaintiff, it is contended that it does not pertain to house of Kala Singh, rather relates to own house of plaintiff, which is situated on the western side of house of Kala Singh; the house in dispute was constructed by Kala Singh and does not belong to plaintiff and it is in exclusive possession of Kala Singh and Jagir Singh defendant No.2 is lawful attorney of Kala Singh. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

4. Defendant No.5 in the separate written statement filed by it took up preliminary objections that plaintiff has no locus standi to file the suit against defendant No.5 and such suit is liable to be stayed because another suit titled 'Kala Singh Versus Puran Singh' which is prior in time is already pending in the Court at Jagraon. Such defendant took various other objections, to wit; the plaintiff has not approached the Court with clean hands and is estopped by his own act and conduct from filing the present suit. On merits, such defendant contended that defendant No.2 had filed the suit titled as 'Kala Singh Versus Puran Singh' in which he is alleging ownership of Kala Singh over the disputed site where defendants No.1 to 4 are living. The plaintiff had intentionally not made Kala Singh a party in the present suit. The defendant No.5 had installed connection in the

name of defendant No.1 since he is in possession of the house. The filing of complaint by plaintiff dated 23.5.2011 to defendant No.5 for removal of the electricity meter stands admitted; the defendant No.2 Jagir Singh had also filed a civil suit for grant of permanent injunction in his capacity as attorney of Kala Singh titled 'Kala Singh Versus Puran Singh'. Denying the remaining allegations, such defendant also prayed for dismissal of the suit.

5. Replication was not filed. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to decree for possession of the suit property as owner? OPP
2. Whether the plaintiff is entitled to decree for mandatory injunction as prayed for? OPP
3. Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP
4. Whether the suit is liable to be stayed under section 10 CPC? OPD
5. Whether the suit of plaintiff is not maintainable? OPD
6. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD
7. Whether the suit is bad for mis-joinder of the parties? OPD
8. Whether the plaintiff has no locus standi to file the present suit? OPD-5.

9. Whether the plaintiff has not come to the court with clean hands and so he is estopped by his own act and conduct from filing the present suit? OPD-5

10. Relief.

Both the parties led evidence in respect of their claims.

6. During the course of evidence, the plaintiff got his statement recorded as PW1 and he tendered in evidence his affidavit Ex.PA and deposed as per facts of the case. He also examined Sadhu Singh son of Kala Singh as PW-2 vide affidavit Ex.PB and Satpal Singh as PW-3 vide affidavit Ex.PC. With that the evidence of the plaintiff stood closed.

7. In rebuttal the defendants examined Mangal Singh, Kammo Bai, Swarna Bai, Jagir Singh as DW-1 to DW-4 vide their affidavits Ex.DA to Ex.DC and Ex.DW4/A respectively and then closed their evidence.

8. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Jagraon vide judgment and decree dated 15.3.2017 dismissed the suit with costs.

9. The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana, who vide judgment and decree dated 10.4.2018 accepted the appeal, set aside the judgment and decree passed by the trial

Court and decreed the suit of the plaintiff.

10. Feeling aggrieved by the judgment and decree, defendants No.1 to 4 have filed the present regular second appeal. Respondent No.1 plaintiff has also filed a caveat petition.

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

12. The trial Court on analysis of evidence in light of the facts and circumstances of the case did not find any merit in the suit of the plaintiff and rejected the same. The trial Court had observed that the plaintiff by way of filing of the suit was seeking possession of plot No.A-13 claiming that he was owner of the same, whereas the version of the defendants was that the disputed property bears No.A-5, which was allotted to one Kala Singh and it was Kala Singh, who had appointed Jagir Singh – defendant No.2 as his lawful attorney, who is looking after and managing the house in suit. DW1 Mangal Singh in his cross-examination had stated that no property was allotted to his father Kala Singh, whereas DW2 Kamo Bai had testified that her father Kala Singh had sold property to Jagir Singh. DW3 Swarna Bai in her cross-examination had stated firstly that no land was allotted to her father and then that the same was sold by her father to Jagir Singh. However, the finding of the trial Court was that in civil suit the plaintiff has to prove his case and has to stand on his own legs and he cannot take the advantage of the weakness in the

case of defendants. The plaintiff himself appearing as PW1 in his cross-examination had admitted that area of khasra No.75 allotted to him by the Government is in his possession and he has constructed his house over the area allotted to him bearing khasra No.75 about 15 years back and he is in possession of the house in suit, half of which is constructed and in the other half, he uses for tethering of the cattle. According to the trial Court it was not understood as to why Puran Singh had filed a suit for possession when according to him he is in possession of plot so allotted to him in khasra No.75. Therefore, issue No.1 was decided against the plaintiff observing that he he was not entitled to a decree for possession of the suit property. Issues No.2 and 3 were also decided against him holding that plaintiff is not entitled for mandatory injunction and permanent injunction prayed for. Mainly on the basis of these findings suit of the plaintiff had been dismissed by the trial Court.

13. Now coming to the judgment rendered by the First Appellate Court of Additional District Judge, Ludhiana, who observed that the appellant/plaintiff is claiming himself to be owner of 15 marlas of land bearing No.A/13, whereas defendants are claiming their right over property No.A/5, which is measuring 11M-5S and is the ownership of Kala Singh by way of conveyance deed dated 14.7.1975. Kala Singh had executed a power of attorney in favour of Jagir Singh. The electric connection is in the name of

respondent No.1 Boota Singh. PW-1 Puran Singh has admitted in his cross-examination that area of khasra No.75 which was allotted to him by the Government, is in his possession and he has constructed the house over that area about 15 years back and since then he is in possession of residential house, which is constructed in half of the portion of the area allotted to him. PW-2 Sadhu Singh has admitted in his cross-examination that he has not seen any document regarding ownership of suit land nor he knows about the allotment of this land. DW-1 Mangal Singh, DW-2 Kammo Bai, DW-3 Swarna Bai who are children of Kala Singh have stated that Kala Singh is alive.

14. The factors which seems weighed heavily on the mind of Additional District Judge in accepting the appeal and decreeing the suit of the plaintiff appears to be that the plaintiff/appellant had placed on record site plan Ex.P4 whereas no counter site plan was proved in evidence by the respondents. DW4 when shown site plan Ex.P4 stated that it is of the disputed property and number of the disputed property is A-13, whereas number of property allotted to Kala Singh is A-5. Thus it comes out that property in dispute bears No.A-13 and site plan is correct according to spot. Learned Additional District Judge, Ludhiana has drawn an inference that land owned by Kala Singh is other than land owned by appellant, which is the property in dispute as shown in site plan Ex.P4 and as admitted by DW4 Jagir Singh in his cross-examination. For that reason, the

appeal had been accepted.

15. Feeling aggrieved the defendants No.1 to 4 have approached this Court by way of filing the present regular second appeal. Vide order dated 9.7.2019, concerned Tehsildar Jagraon was directed to depute some competent revenue official to demarcate the plot bearing No.A-13 allotted to respondent/plaintiff in presence of the both the sides after giving due notice and submit report. In compliance with that, a report along with annexures has been received.

16. After hearing learned counsel for the parties and going through the record, I find that the admission is best type of evidence and a fact which is admitted need not be proved. When plaintiff Puran Singh during the course of his cross-examination had categorically admitted in his cross-examination while appearing as PW1 that the area of Khasra No.75, which was allotted to him by the Government is in his possession; he had constructed the house over the area allotted to him in khasra No.75 about 15 years back and is in possession of that house, half of the portion is meant for residential purpose and half for tethering cattle, that sealed the case of the plaintiff.

17. The trial Court was justified in drawing the conclusion that it was so then how could plaintiff have filed a suit for possession against the defendants complaining that they are in wrongful

possession of the house as licensees. The claim of the plaintiff was rightly rejected by the trial Court. But the First Appellate Court by misappraisal of the evidence and wrong interpretation of law and legal and factual position decreed the suit of the plaintiff, which decision cannot be sustained legally and rather it is liable to be set aside by way of acceptance of the appeal.

18. Resultantly the judgment and decree passed by Additional District Judge, Ludhiana are set aside and the judgment and decree passed by the trial Court dismissing the suit of plaintiff are restored. Therefore, the suit of the plaintiff stands dismissed.

19. The appeal stands allowed accordingly with costs.

Since the present appeal stands allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

12.12.2022

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No