

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

390

RSA No.386 of 2002 (O&M)
Date of Decision: 10.07.2023
Reserved on: 19.05.2023

Mohinder Singh (now deceased)
through his legal heirs and others

... Appellants

Versus

Darshan Singh (deceased)
through his legal heirs and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rai Singh Chauhan, Advocate,
Mr. Rohit Sapehiya, Advocate and
Ms. Deepika Chauhan, Advocate,
for the appellants.

Mr. M.L. Saini, Advocate,
for the respondents.

MANISHA BATRA, J.

1. Instant appeal has been preferred against the judgment and decree dated 11.12.2001 passed by the Court of learned District Judge, Rupnagar in Civil Appeal No. 132 of 4.12.1999 titled as *Darshan Singh v. Mohinder Singh*, whereby the judgment and decree dated 18.11.1999 passed by the court of learned Civil Judge (Senior Division), Rupnagar in Civil Suit No. 235 of 27.07.1988 titled as *Mohinder Singh v. Darshan Singh*, had been set aside and the appeal was allowed.

2. For the sake of convenience, the parties shall be referred to

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hereinafter as per their original nomenclature as given during trial of the suit.

3. Brief facts of the case relevant for the purpose of disposal of this appeal are that the plaintiff-Mohinder Singh filed the aforementioned suit on the averments that he was owner in possession of land comprised in Khasra No. 469 and 469/1 measuring 0-9 biswas and 0-4 biswas respectively. He had also applied with the Custodian department for allotment of land comprised in khewat No. 69, khatauni No.90, khasra no. 469/2, measuring 10 biswas situated at Village Hussianpur, Tehsil and District Ropar (hereinafter to be referred as “disputed property”). The Custodian department after verifying and confirming the possession of the plaintiff over the disputed land had allotted the same to him and a conveyance deed dated 27.07.1982 was executed in his favour. The mutation of the disputed property was also sanctioned in his favour and ever since then the plaintiff was in possession of the disputed property. He was using it as a courtyard of his house which was abutting the disputed property and used to store cow dung cakes and tie buffalows over the same. He had barbed the disputed site with wire and also used it as ‘dher’. Even the windows and doors of his house were opening towards the disputed property. While further claiming that his possession over the disputed property was hostile to villagers including the defendant and he had become owner of the same, the plaintiff alleged that the defendant who had no concern with the disputed property, was bent upon grabbing the same and interfering in his possession. Therefore, he prayed for passing a decree for permanent injunction thereby restraining the defendant from interfering in his peaceful possession over the disputed property or from dispossessing

him from the same.

4. The defendant appeared in response to the notice and filed written statement raising preliminary objection as to maintainability. It was alleged that the disputed land had infact been allotted to one Ram Singh son of Badan Singh in the year 1953 by the Custodian department and a conveyance deed was also executed in his favour. The defendant had purchased this property vide sale deed dated 09.07.1982 from subsequent purchasers of Ram Singh and he was in possession of the disputed property since then. It was also pleaded that proceedings by way of remand qua the disputed property were pending before the Tehsildar, Sales, Ropar who was directed to inspect the spot personally. While controverting the remaining averments, dismissal of the suit had been prayed for.

5. No rejoinder was filed. On the pleadings of the parties following issues were settled by learned trial Court vide order dated 23.09.1988:-

“1. Whether the plaintiff is the owner in possession of the land in dispute? OPP.

2. Whether the plaintiff is entitled to the injunction prayed for? OPP.

3. Whether the suit is not maintainable in the present form? OPD.

4. Relief.”

6. The parties adduced evidence in support of their respective assertions. The plaintiff himself stepped into the witness box as PW-1 and produced PW-2 Darshan Singh. In documentary evidence, he produced

Ex.P1 certified copy of judgment dated 30.11.1985 passed in Civil Suit

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No.27 of 1984 titled as *Dharam Singh and others v. Mohinder Singh and others*, Ex.P-2 certified copy of judgment dated 30.11.1985 passed in Civil Suit No.42 of 1984 titled as *Mohinder Singh v. Mai Ditta*, Ex.P-3 copy of jamabandi for the year 1982-83 showing the plaintiff as owner in cultivating possession of land comprised in Khasra No.469/2 measuring 10 biswas and Ex.P-4 copy of jamabandi for the year 1982-83 showing Mai Ditta and Dharam Singh to be in cultivating possession of land comprised in Khasra No.628/469 measuring 9 biswas. In additional evidence, the plaintiff produced Ex.PX copy of conveyance deed dated 03.05.1991 and Ex.PY copy of jamabandi for the year 1982-83.

7. On the other hand, the defendant produced three witnesses. He himself stepped into the witness box as DW-1 and examined DW-2 Ajit Singh and DW-3 Dharam Singh. In documentary evidence, he produced **Mark A** original sale deed dated 02.08.1972 executed by Ram Singh son of Badan Singh in favour of Smt. Harbans Kaur qua the vacant plot bearing No.19 situated in the abadi of Village Hussainpur, Tehsil Ropar, **Mark B/Ex.D1/A** original sale deed dated 03.04.1978 executed by Smt. Harbans Kaur in favour of Dharam Singh in respect of plot No.19, **Mark X** original sale deed dated 09.07.1982 executed by Dharam Singh in favour of defendant Darshan Singh qua plot No.19. Ex.D/3 copy of jamabandi for the year 1952-53, Ex.D/4 copy of Aks Sajra, Ex.D/5 copy of jamabandi for the year 1922-23 in Urdu Ex.D/6 copy of a jamabandi in Urdu, Ex.D/7 copy of site plan, Ex.D/8 and D/9 copies of the jamabandi for the year 1961-62, Ex.D/10 copy of Aks Sajra, Ex.D/11 certified copy of report dated 26.07.1983 prepared by Kanungo, Rupnagar, Ex.D/12 copy of order dated 30.12.1991 passed by Commissioner, Patiala Division in Revision Petition

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titled as *Darshan Singh v. State of Punjab*, Mark Y copy of order dated 15.11.1988 passed by Tehsildar (Sales) Rupnagar.

8. On appraising evidence produced on record and hearing the contentions raised by both the sides, the learned trial Court decreed the suit filed by the plaintiff Mohinder Singh vide judgment and decree dated 18.11.1999 and restrained the defendant from interfering into the possession of the plaintiff over the disputed property and also from dispossessing him from the same.

9. Feeling aggrieved, the defendant Darshan Singh filed appeal before the First Appellate Authority who vide judgment and decree dated 11.12.2001 allowed the said appeal thereby setting aside the judgment and decree passed by learned trial Court and aggrieved by the same, the plaintiff who is now dead and represented by legal representatives, filed this appeal.

10. It was argued by learned counsel for the legal representatives of the deceased appellants-plaintiff that the impugned judgment and decree as passed by learned First Appellate Court was not sustainable in the eyes of law as the findings as given by it were based on conjectures and surmises. The learned First Appellate Court did not apply its judicious mind and did not appreciate the evidence produced on record in a proper manner. The respondent-defendant had miserably failed to establish that the plot No.19 of which he claimed to be an owner, was connected with the disputed property comprised in Khasra No.469/2 in any manner whatsoever. The factum of possession of the appellant over the disputed property stood proved not only from the evidence produced on record by the appellant himself but also from the report Ex.D/11 prepared by the Local Commissioner appointed by the Court. It was also well proved on record

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that the appellant was not only the owner of the disputed property but was also in possession of the same. He submitted that cryptic findings had been given by learned First Appellate Court which were liable to be reversed. With these broad arguments, it was asserted that the impugned judgment passed by learned First Appellate Court was liable to be set aside, the judgment and decree passed by learned trial Court deserved to be restored and further that the instant appeal deserved to be accepted.

11. While controverting the contentions as raised by learned counsel for the appellant-plaintiff, the learned counsel for the respondent-defendant Darshan Singh vehemently argued that the findings as given by learned First Appellate Court were well reasoned and did not warrant any interference. The appellant was guilty of concealment of material and true facts. He had procured sale deed in respect of the disputed property during the pendency of the suit. However, the said sale deed had been cancelled by the revenue authorities. Even the mutation sanctioned on the basis of the same had also been ordered to be cancelled. The appellant had based his claim by taking self contradictory pleas as on the one hand, he claimed to have purchased the disputed property but on the other hand, his version was that his possession over the same was hostile to the respondent and to the villagers. The respondent had produced overwhelming evidence on record to prove that the disputed property was infact the plot No.19 which was originally allotted to one Ram Singh who had sold the same further and subsequently, it had been purchased by the respondent-defendant vide a registered sale deed. The claim of the appellant was based on vague pleadings as he had not specified as to how he had become owner of the disputed property. With these submissions, it was argued that the appeal

being devoid of any merit was liable to be dismissed.

12. Learned counsel for the parties were heard at considerable length and the contentions as raised by them have been given due deliberations.

13. It will not be out of place to mention here that during the pendency of this appeal, the appellant-plaintiff filed an application under Order 41 Rule 27 of CPC which was allowed vide order dated 05.05.2023 in view of no objection given by the respondent and by way of additional evidence, he placed on record Annexure A-1 copy of order dated 06.09.1989 passed by Sub Divisional Officer (Civil)-cum-Sales Commissioner, Rupnagar in appeal titled as *Mohinder Singh v. State of Punjab* as filed against order dated 15.11.1988 passed by Tehsildar, Sales, Annexure A-2 copy of order dated 23.07.1990 passed by Deputy Commissioner-cum-Chief Sales Commissioner, Rupnagar in appeal titled as *Darshan Singh v. State of Punjab and another* and Annexure A-3 copy of judgment dated 26.03.2002 passed in Civil Suit No.RT-83 of 1995 titled as *Dharam Singh through legal representatives v. Mohinder Singh and another*.

14. The appellant-plaintiff while claiming himself to be owner as well as in possession of the disputed land comprised in Khasra No.469/2 measuring 10 biswas claimed a relief of injunction as against the respondent-defendant whereas the respondent-defendant while claiming that plot bearing No.19 was a part of the disputed land and the same was purchased by him from the subsequent purchasers of original purchaser Ram Singh and he was in possession of the same, prayed for dismissal of the relief as claimed by the appellant-plaintiff. The learned trial Court had

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observed that the respondent-defendant had failed to establish that the plot No.19 was part of land comprised in Khasra No.469/2 whereas the learned First Appellate Court had observed that the disputed property was initially allotted to Ram Singh and was subsequently purchased by the respondent-defendant and respondent-defendant was being lawful owner of the disputed property could not be restrained by passing decree of permanent injunction. First of all, let us consider the question as to whether the property comprised in plot No.19 was proved to be part of the disputed property comprised in Khasra No.469/2 or not? For this purpose, this Court will have to go through the respective claims as made by both the parties with regard to their title in respect of the disputed property. As averred in the plaint, the disputed property was allotted to the appellant-plaintiff by Custodian department vide conveyance deed dated 27.07.1982 on the basis of his previous possession over the same and a mutation was also sanctioned in his favour in this regard. Though the appellant-plaintiff neither produced the copy of conveyance deed dated 27.07.1982 nor copy of mutation sanctioned on the basis thereof, however, from other documents produced on record by both the parties, the fact that a conveyance deed in respect of land comprised in Khasra No.469/2 measuring 10 biswas was executed in favour of the appellant-plaintiff on 27.07.1982 by the Custodian department stands proved. **Mark Y** is copy of order dated 15.11.1988 passed by Tehsildar (Sales), Rupnagar as relied upon by the respondent-defendant. A perusal of this order reveals that the Tehsildar (Sales), Rupnagar had suo motu taken up the matter under Section 10 of the Punjab Package Deal Properties (Disposal) Act, 1976 and had observed that the land comprised in Khasra No.469/2 measuring 400 square meters was transferred in favour of the

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appellant/plaintiff vide conveyance deed dated 27.07.1982 on the basis of possession/occupancy. He had further observed that at the time of rectifying the girdawari entries, a serious mistake had been committed and the appellant-plaintiff was shown to have become owner to the extent of 10 biswas of land comprised in Khasra No.469/2 though he had previously purchased only 4 biswas of land out of Khasra No.469 which was carved out as Khasra No.469/1 and the above mentioned 400 square meters of land vide conveyance deed dated 27.07.1982. The Tehsildar, Sales is shown to have set aside the conveyance deed dated 27.07.1982 and mutation No.137 sanctioned on the basis of the same and is also shown to have passed an order that the land comprised in Khasra No.469/2 be recorded under the ownership of Central Government i.e. Custodian department. From this order **Mark Y** at least, it is clear that a conveyance deed dated 27.07.1982 had been executed in favour of the appellant-plaintiff qua the disputed property.

15. Further, the appellant-plaintiff himself produced before this Court by way of additional evidence documents Annexure A-1 and A-2. Annexure A-1 is copy of order dated 06.09.1989 passed by Sub Divisional Officer (Civil)-cum-Sales Commissioner, Rupnagar in an appeal which is shown to have been preferred by the present appellant against the order dated 15.11.1988 passed by Tehsildar, Sales i.e. Mark Y. On perusal of this order, it is revealed that the order passed by the Tehsildar, Sales had been set aside and the matter was remanded back to him by making an observation that the land bearing Khasra No.469/2 was in possession of the appellant-plaintiff and was also owned by him and by making an observation to recover any amount, if payable by the appellant from him.

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From a perusal of Annexure A-2 which is copy of order dated 23.07.1990, it is further revealed that Deputy Commissioner-cum-Chief Sales Commissioner, Rupnagar dismissed the appeal filed by the present respondent-defendant against the order Annexure A-1 as passed by the Sales Commissioner. On a collective perusal of Mark Y, Annexure A-1 and Annexure A-2, it is revealed that the conveyance deed qua land comprised in Khasra No.469/2 i.e. the disputed property had been executed by Custodian department on 27.07.1982 in favour of the appellant-plaintiff and though this conveyance deed had been ordered to be set aside initially by the Tehsildar, Sales by observing some errors in the same but the same was ordered to be maintained as such by the superior authorities of the revenue department. Both Annexure A-1 and Annexure A-2 had been allowed to be placed on record before this Court in view of no objection given by learned counsel for the respondent-defendant qua allowing the application of the appellant-plaintiff for producing these documents on record by way of additional evidence. More so, no objection as to authenticity of Annexures A-1 and A-2 had been raised by the respondent, therefore, it is to be presumed that the orders Annexures A-1 and A-2 had been passed by the superior revenue authorities thereby reversing the order of Tehsildar, Sales who had set aside the conveyance deed executed in favour of the appellant-plaintiff qua the disputed land comprised in Khasra No.469/2. At the same time, it is revealed from these orders that vide conveyance deed dated 27.07.1982 only an area of land measuring 400 square meters out of land comprised in Khasra No.469/2 had been allotted in favour of the appellant-plaintiff and not 10 biswas of land as claimed by him. It is also reflected from the order Mark Y that mutation No.137 had been sanctioned qua 10

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biswas of land comprised in Khasra No.469/2 in favour of the appellant-plaintiff. Since the order passed by the Tehsildar qua setting aside of this mutation had been reversed by the revenue authorities by orders Annexures A-1 and A-2, therefore, it emerges that the revenue authorities accepted the appellant-plaintiff as owner of the land comprised in Khasra No.469/2 measuring 10 biswas irrespective of the fact that he was not proved to have purchased the entire area of land measuring 10 biswas or lesser than that.

16. It is pertinent to mention here that the dispute before the learned trial Court, however, was not with regard to the ownership of the disputed property i.e. land comprised in Khasra No.469/2 measuring 10 biswas but with regard to possession of that much of land as the pleadings in the plaint with regard to the appellant-plaintiff having ownership over the entire area measuring 10 biswas themselves are quite vague. At one point, the appellant-plaintiff pleaded that he had purchased the land comprised in this khasra vide conveyance deed dated 27.07.1982 but in para No.5 of the plaint, he claimed that he was in possession of this land since long and his possession was hostile to the respondent-defendant as well as all villagers. By pleading so itself, he is shown to have accepted the fact that the entire 10 biswas of land as comprised in Khasra No.469/2 was not owned by him. However, since the relief of injunction had been claimed by the appellant-plaintiff on the basis of his possession over the entire disputed property, therefore, without going into the detail into the question of his ownership over this entire land, this Court will consider as to whether he was found to be in possession of entire 10 biswas of land comprised in Khasra No.469/2 or not. Before delving on that point, it is to be seen as to whether the land comprised in plot No.19 was proved to be part of the above mentioned

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khasra number or not? In this context, it may firstly be stated that the respondent-defendant claimed that the land comprised in plot No.19 was initially purchased by one Ram Singh from the Custodian department. He has placed on record Mark A showing that plot No.19 was sold by Ram Singh to Smt. Harbans Kaur vide sale deed dated 02.08.1972. Mark B is copy of sale deed dated 03.04.1978 executed by Smt. Harbans Kaur in favour of Dharam Singh son of Jata Singh and Mark X is copy of sale deed dated 09.07.1982 executed by Dharam Singh in favour of present respondent-defendant. The burden of proving the fact that the plot No.19 was part of the disputed property lied heavily on the shoulders of the respondent-defendant. But on perusal of evidence placed on record, it is revealed that the respondent-defendant had failed to discharge this onus by leading any sufficient, cogent, convincing and satisfactory evidence. From the documents Mark A to Mark X, no inference can be drawn that the same were relating to the disputed property. The khasra number of the property which was purchased vide these sale deeds had not been mentioned. The learned First Appellate Court, however, is not shown to have considered this fact and, therefore, in the considered opinion of the Court, the findings as recorded by learned First Appellate Court to the effect that disputed property was proved to be owned by the present respondent-defendant are not sustainable in the eyes of law and are liable to be reversed. More so, the learned First Appellate Court is shown to have taken the order dated 15.11.1988 Mark Y into consideration while arriving at these findings whereas it is discussed above, it is proved from the documents Annexure A-1 and Annexure A-2 that the order dated 15.11.1988 passed by the Tehsildar, Sales, Rupnagar had been set aside. Therefore, this Court is

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inclined to hold that the respondent-defendant had failed to produce any convincing and legally admissible evidence on record to prove that the plot No.19 which was shown to be purchased by him vide sale deed Mark X was comprised in the disputed property bearing khasra No.469/2. Reverting back to the question as to whether the appellant-plaintiff was entitled to the relief of injunction as prayed by him, as discussed above, the copy of conveyance deed dated 27.07.1982 had not been produced in evidence by the appellant and in the absence of the same, it has not been revealed as to exactly how much area of land had been purchased by the appellant from the Custodian department vide this sale deed and in the absence of the same, the observations as made in order Mark Y by the Tehsildar, Sales that it was only 400 square meters of land which was subject matter of conveyance deed dated 27.07.1982, have to be believed. The appellant heavily relied upon documents Exhibits P-1 to P-4 to prove his claim that he was owner in possession of the land measuring 10 biswas comprised in the land bearing Khasra No.469/2 i.e. disputed property. Exhibits P-1 and P-2 are copies of judgments dated 30.11.1985 respectively passed in Civil Suits No.27 and 42 of 1984. The Civil Suit No.27 of 1984 is shown to have been filed by Dharam Singh and others against the present appellant whereas Civil Suit No.42 has been filed by the present appellant against one Mai Ditta. On perusal of contents of these judgments, it is undoubtedly revealed that the abovesaid parties had admitted that the present appellant-plaintiff had purchased 10 biswas of land out of land comprised in Khasra No.469/2. However, since the said land i.e. the disputed property was not subject matter of both the above mentioned Civil Suits nor the opposite parties of the abovesaid suits are parties to the instant case, therefore, the admissions

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so made have no relevance. Then coming to Ex.P-3 which is copy of jamabandi for the year 1982-83 pertaining to the disputed property, the present appellant-plaintiff is recorded to be owner as well as in possession of the disputed property as per the entries in this jamabandi. However, since the entries as made in these documents can be stated to be stray entries only as neither the jamabandis which were prior to this jamabandi nor the copies of subsequent jamabandis had been produced on record by the appellant to prove the authenticity of these entries, therefore, simply on the basis of these entries, no definite conclusion can be drawn as to the appellant-plaintiff being owner of entire 10 biswas of land forming part of khasra No.469/2 but at the same time, some other important facts cannot be ignored. DW-2 Ajit Singh son of previous owner Ram Singh admitted the fact that the disputed property was in possession of the appellant-plaintiff. It is also revealed from the record that during pendency of the suit, the respondent-defendant had moved application for demarcation of the disputed property which was allowed vide order dated 20.08.1990 and Halqa Kanungo, Village Hussainpur was appointed as a Local Commissioner with a direction to demarcate the disputed property. He conducted demarcation on 15.11.1990 and submitted his report before learned trial Court. Though this report has not been formally exhibited in evidence but can still be considered. On a perusal of this report, it is revealed that the disputed property which was previously bearing khasra No.469/2 and after the consolidation was assigned new khasra number as 122 has been demarcated by the Local Commissioner in the presence of the parties and he had given his report that this land was in possession of the appellant-plaintiff. No objection to this report had been filed by the

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respondent-defendant at any stage of the trial. Therefore, there is no reason to disbelieve the correctness of this report which proves that the disputed property is infact in possession of the appellant-plaintiff. The learned First Appellate Court while recording its findings neither took the report of Local Commissioner showing the appellant to be in possession of the disputed property into consideration nor the admission as made by DW-2 that the appellant was in possession of the disputed property was taken into consideration by it. For the purpose of granting the relief of injunction, the appellant-plaintiff was required to establish his possession over the disputed property to the exclusion of the respondent-defendant. At the cost of repetition, it may be stated that the respondents failed to produce any convincing and reliable evidence on record to prove that he had purchased any disputed property or in possession of the same. Whereas the evidence produced on record by the appellant-plaintiff suggested so. In such circumstances, when the factum of possession of the appellant over the disputed property stood established from the material placed on record and as the respondent/his legal representatives were not proved to be either owners or in possession of the disputed property, therefore, in the considered opinion of this Court, the learned First Appellate Court had erred in declining the relief of injunction to the appellant. Therefore, the findings as given by learned First Appellate Court do not deserve to be sustained in the eyes of law. The same are accordingly set aside. Consequently, the judgment and decree passed by learned First Appellate Court is set aside. The judgment and decree passed by learned trial Court is ordered to be restored. The appeal filed by the appellant-plaintiff is allowed in these terms. There is no order as to costs.

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17. Miscellaneous application(s), if any, also stand disposed of.

10.07.2023
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No