

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1854 of 1991
Date of Decision: 19.4.2023
Reserved on: 11.04.2023

Baldev Raj and another ... Appellants

Versus

Chandi Dass ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Mr. A.S. Tewatia, Advocate,
for the appellants.

None for the respondent.

MANISHA BATRA, J.

1. The present appeal has been filed by the defendants-appellants against the judgment and decree dated 21.08.1991 passed in Civil Appeal No.RT 64 of 1989 titled as *Chandi Dass v. Baldev Raj and another* whereby the judgment and decree dated 31.07.1989 passed by learned trial Court in Civil Suit No.408 dated 09.12.1986 titled as *Chandi Dass v. Baldev Raj and another*, had been set aside, the appeal had been accepted and the suit filed by the plaintiff-respondent had been decreed.

2. The parties are referred to hereunder in the same order as they were arrayed before the trial Court.

3. Broadly but briefly, the case of the plaintiff as stood exposted from the plaint could be portrayed thus:-

The plaintiff-Chandi Dass filed the aforementioned suit on

Neutral Citation No.2023:PHHC:055445

the averments that the property detailed out in the head note of the plaint (hereinafter to be mentioned as the “disputed property”) was originally owned by his maternal grandfather Sh. Kailash Nath. A house was previously existing on this property but as due to old age of its construction, the same had fallen down, therefore, it was now existing in the shape of a plot. After the death of Sh. Kailash Nath, the disputed property was inherited by his mother Smt. Punna Devi and after her demise, the plaintiff had become owner in possession of the same by way of succession. It was further pleaded that the property of Shakti Parkash and Chint Ram who were brothers was existing on the northern side of the disputed property. In the year 1970, Shakti Parkash had submitted proposed site plan for construction of a house over the said property with Municipal Committee, Kharar. The same property as owned by Shakti Parkash and Chint Ram had been subsequently sold to defendants No.1 and 2. It was alleged that since the disputed property which was adjoining the property sold to defendants No.1 and 2, was lying in the form of a vacant plot, therefore, by taking advantage of that fact, the defendants No.1 and 2 were bent upon encroaching the same and had even collected building material at the spot for raising construction thereon. The plaintiff, therefore, prayed for passing a decree for permanent injunction thereby restraining the defendants from encroaching upon the disputed property.

4. Impugning and challenging, denying and refuting the allegations/averments in the plaint, the defendants filed written statement; the gist and kernel of which is that they were bona fide purchasers of the disputed property for valuable consideration and hence were protected. It

was admitted that the disputed property was previously a house and had subsequently become a plot but it was denied that it was ever owned by Sh. Kailash Nath or was inherited by the plaintiff. It was asserted that the disputed property was previously owned by the predecessor-in-interest of Chint Ram and by virtue of a family settlement, it had fallen to his share and he had sold the same to them for a sale consideration amount of Rs.20,000/- vide sale deed dated 24.10.1986 and they had become owner of this property and were also in possession of the same. Objections as to maintainability, locus standi, non-joinder of necessary parties and further that the site plan as produced by the plaintiff was wrong, had been taken and dismissal of the suit had been prayed for.

5. The plaintiff filed replication controverting the pleas taken in the written statement and re-asserting those of the plaint. On the pleadings of the parties, the following issues were culled out:-

1. Whether plaintiff is in possession of the suit property as alleged? OPP.
2. If issue No.1 is proved, whether plaintiff is entitled to the injunction prayed for? OPP.
3. Whether suit is bad for non-joinder of necessary parties? OPD.
4. Whether suit in the present form is not maintainable? OPD.
5. Whether defendants are bona fide purchasers for consideration without notice? If so, its effect? OPD.
6. Relief.

6. The parties adduced oral as well as documentary evidence in support of their respective assertions. The plaintiff examined five witnesses namely, PW-1 Harjit Singh, Clerk Municipal Committee, PW-2 Sham Lal, PW-4 Dial Ram Sharma, PW-5 Gurmail Singh, Clerk, Judicial Record Room, PW-6 Hardial Chand and himself appeared as PW-3. In documentary evidence, he produced Ex.P-1 copy of site plan submitted by Shakti Parkash before Municipal Committee, Ex.P-2 copy of jamabandi for the year 1964 and Ex.P-3 copy of jamabandi for the year 1982-83, Ex.PW6/A/Mark B copy of sale deed dated 15.04.1971, Ex.PW6/B copy of site plan annexed with sale deed Ex.PW6/A, Ex.PW6/C/Mark C copy of rent deed dated 25.11.1944 and Ex.PW6/D/Mark D copy of rent deed dated 22.08.1950.

7. On the other hand, the defendants examined three witnesses namely, DW-1 Jawahar Lal, scribe of sale deed Ex.DW1/A executed in favour of the defendants by Sh. Chint Ram on 24.10.1986, DW-2 Tehal Singh, attesting witness to the said sale deed and DW-4 Jai Pal, Clerk, Judicial Record Room. The defendant Baldev Raj himself appeared as DW-3. In documentary evidence, the defendants also produced Ex.D-1 copy of decision of mediators/Salasnama dated 31.08.1976, and DW1/B copy of site plan annexed with the sale deed Ex.DW1/A.

8. The learned trial Court on consideration of evidence adduced before it, proceeded to conclude that that the plaintiff was not proved to be in possession of the disputed property and hence was not entitled to claim the relief of injunction without claiming possession of the same, and dismissed the suit.

9. Feeling aggrieved, the plaintiff filed appeal which was allowed

Neutral Citation No.2023:PHHC:055445

vide judgment and decree dated 21.08.1991 passed by learned First Appellate Court and the suit filed by the plaintiff was ordered to be decreed with costs. It is against this judgment that the present second appeal has been preferred while assailing the findings of fact arrived at by the First Appellate Court.

10. Learned counsel for the appellants strenuously argued that the findings as given by learned First Appellate Court as to the respondent-plaintiff being owner in possession of the disputed property were perverse and not sustainable in the eyes of law and hence were liable to be set aside as these findings were based on mis-appreciation of evidence produced on record. The appellants had purchased the disputed property vide registered sale deed Ex.DW1/A from its original owner and were in established possession of the same since long. They were proved to be bona fide purchasers with due consideration. The evidence led by them proved that they had been tethering their cattle and had been storing cow dung cakes over the disputed property and even construction material belonging to them was lying on this property which established the factum of their being in possession. The respondent, on the other hand, had failed to produce any reliable and convincing evidence on record on this point. He argued that a grave error had been committed by learned First Appellate Court by declining the relief of injunction to them and hence, it was urged that the impugned judgment as passed by learned First Appellate Court was liable to be reversed and the appeal deserved to be accepted.

11. It will not be out of place to mention here that there was no representation on behalf of the respondent at the time of rendering

arguments.

12. The following substantial question of law arises in the present case:-

“Whether the findings arrived at by the learned First Appellate Court as to the respondent being owner in possession of property in dispute are not sustainable in the eyes of law and are based on misappreciation of evidence produced on record”?

13. Arguments advanced by learned counsel for the appellants have been given due deliberation and the record has been carefully appraised by this Court. On perusal of the pleadings as well as evidence led by the parties before the learned trial Court, it emerges that there was no dispute between the parties about the fact that the disputed property was existing in lal dora and was not having any specific khasra number, plot number or house number or any other mark of identification. It was also not in dispute that previously, this property was in the form of a house and at the time of filing of the suit, it was existing as a vacant plot. Neither of the parties produced any documentary evidence with regard to ownership of this property. It was, however, also not in dispute that the property which was shown to be existing on the southern side of the property shown in the proposed site plan of house of Shakti Parkash Sharma son of Tulsi Ram who was admittedly brother of Chint Ram, was the disputed property. As per the respondent-plaintiff, it was his maternal grandfather Kailash Nath who originally owned this property and after his demise, previously the mother of the respondent namely, Smt. Punna Devi and then he himself had become owner of the same by way of inheritance. To prove that Sh. Kailash Nath was his

Neutral Citation No.2023:PHHC:055445

maternal grandfather and Smt. Punna Devi was his mother, the respondent-plaintiff had relied upon Ex.P-3 copy of jamabandi for the year 1982-83 showing himself and his brothers as co-owners in possession of certain agricultural land. In this jamabandi, the name of his mother was mentioned as Smt. Punna Devi daughter of Kailash Nath. The entries in this jamabandi have remained un rebutted and unchallenged. The same also stand corroborated from the testimony of not only respondent-plaintiff himself but also by the testimony of PW-4 Dial Ram Sharma and PW-6 Hardial Chand. The appellants failed to lead any evidence to the contrary. The appellant-defendant No.1 Baldev Raj while appearing as DW-3 did not specifically deny that the maternal grandfather of the respondent was Sh. Kailash Nath and he owned the disputed property. Rather he expressed simple ignorance about this fact. As such, there is no reason to disbelieve the evidence produced on record by the respondent-plaintiff with regard to his being grandson of Sh. Kailash Nath and further about the fact that it was Sh. Kailash Nath who originally owned the disputed property.

14. The claim of the respondent-plaintiff with regard to his grandfather previously being owner of the disputed property was also established from the testimony of PW-6 Hardial Chand son of Gurdial Chand, a neighbourer who proved copy of sale deed Ex.PW6/A, Ex.PW6/B site plan annexed with the said sale deed and rent notes Ex.PW6/C and Ex.PW6/D respectively and deposed that previously his father Sh. Gurdial Chand owned the property which was subject matter of these deeds and he had rented out/sold the same. In all these documents, on the western side of the property of Sh. Gurdial Chand/this witness, is shown to be existing

Neutral Citation No.2023:PHHC:055445

property owned by Sh. Kailash Nath. The appellant-defendant No.1 Baldev Raj admitted during cross-examination that the land owned by Gurdial Khatri was existing on the eastern side of the disputed property. Meaning thereby that the property which was existing on the western side of the property owned by Sh. Gurdial Khatri was infact the disputed property and it was owned by Sh. Kailash Nath. It is important to mention at this juncture that the site plan Ex.P-1 had been proved by PW-1, a Clerk of Municipal Committee, Kharar who deposed that as per the record, this site plan was submitted by Shakti Parkash real brother of Chint Ram on 17.07.1970 for obtaining sanction for proposed construction of a house over the same. Though in the written statement filed by the appellants-defendants, a specific plea had been taken that the site plan Ex.P-1 was a forged document got prepared in connivance with Shakti Parkash who was having strained relations with his brother Chint Ram but not even an iota of evidence had been led by the appellants to prove this plea. It was also not the case of the appellants that the property shown to be existing on the southern side of property wherein Shakti Parkash proposed to construct a house was not the disputed property. It was also not controverted by the appellants that the measurements and boundaries of the disputed property as shown in the head note of the plaint were of the same property which was shown to be existing in the name of Sh. Kailash Nath in the southern side of property of Shakti Parkash in the site plan Ex.P-1. It is crystal clear from these facts that the appellants infact accepted the fact that the property as shown to be of Sh. Kailash Nath in Ex.P-1 was infact the disputed property. In their written statement, the appellants-defendants had pleaded that the site in dispute was

Neutral Citation No.2023:PHHC:055445

originally owned and possessed by predecessor-in-interest of Sh. Chint Ram son of Tulsi Ram and by way of a family settlement/mutation No.493 this property had fallen to his share and they had purchased this property from Chint Ram and were hence bona fide purchasers of the same for due consideration. Interestingly, the mutation No.493 had not been proved in evidence. The appellants relied upon Ex.D-1 photocopy of a decision of Mediators/Salasnama shown to be prepared on 22.02.1970. This document was part of file of Civil Suit No.173 of 1971 titled as *Sakti Parkash v. Bashesar Nath and others*, decided by the Court of learned Sub Judge, 1st Class, Amloh on 31.08.1976. Though this document had been exhibited as such, however, neither it was a certified copy nor the original of the same had been produced in evidence. Moreso, no signatory or scribe of this document had been examined by the appellants. As such, this document could not be considered to be admissible in evidence being not proved in accordance with law. However, even if it was to be considered as such, still on a perusal of contents of the same, it clearly appears that though some properties were shown to be exchanged between Sh. Chint Ram, his brothers Shakti Parkash, Bashesar Nath and Duli Nandan by virtue of Ex.D-1 but the identification of either of these properties is not matching with the description of the disputed property. Therefore, it cannot be stated that vide Ex.D-1, the disputed property had fallen to the share of the vendor Sh. Chint Ram and he had become owner of the same and was having valid title qua the same capable of transferring it.

15. It is also worthwhile mentioning that vide sale deed Ex.DW-1/A, the appellants-defendants had purchased property measuring 45 feet x

Neutral Citation No.2023:PHHC:055445

55 feet and the dimensions, area and boundaries of this property were reflected in Ex.DW1/B site plan annexed with Ex.DW1/A whereas as per site plan Ex.P-1, it was only 26 feet – 6 inches x 55 feet area of land, the proposed site plan of which was submitted before the Municipal Committee by brother of the vendor Chint Ram for sanctioning construction of a house. Meaning thereby that the property which was owned by Shakti Parkash, vendor Chint Ram and his brothers was measuring only 26 feet – 6 inches x 55 feet. Then even while assuming that the same property had fallen to the share of vendor Chint Ram by family settlement, as to how Chint Ram could sell 45 feet x 55 feet area of land to the appellants could not be explained by the appellants. They failed to produce any cogent, convincing, satisfactory and reliable oral or documentary evidence on record to prove that beyond the area of 26 feet – 6 inches x 55 feet of land as shown in Ex.P-1, the vendor Chint Ram or his predecessor in interest owned any other property. As the title of Sh. Chint Ram over an area of land measuring 45 feet x 55 feet could not be established on the basis of evidence produced on record, therefore, the plea as taken by the appellants that they were bona fide purchasers of the disputed property holds no ground as they remained unable to show that they had made due inquiries about the title of the vendor Chint Ram qua the property which was sold by him to them. The appellant-Baldev Raj while appearing as DW-3 expressed ignorance about having any knowledge of the fact that the disputed property which was claimed to have been purchased by him from the vendor Chint Ram, was previously belonging to Sh. Kailash Nath. He was also not having any knowledge that previously, this property was in the shape of a house over

Neutral Citation No.2023:PHHC:055445

which Sh. Kailash Nath, then his daughter Punna Devi and then plaintiff had been living. As already discussed, it was admitted by him that on the eastern side of the disputed property, the land owned by Gurdial Khatri was existing. His admission to this effect proved the truthfulness of the testimony of PW-6 Hardial Chand son of Gurdial Chand that land owned by Sh. Kailash Nath was existing on the western side of their property and also established that the disputed property was owned by Sh. Kailash Nath. Not even this, DW-3 also admitted that the disputed property was infact 30 feet in breadth and 42 feet in length and he failed to explain as to how the vendor Chint Ram was proved to be owner of 45 feet x 55 feet area of land. All this goes to show that the disputed property was infact owned by Sh. Kailash Nath and being son of only daughter of Sh. Kailash Nath, the respondent was presumed to have inherited the same and become owner of the same. Interestingly, the findings as given by learned trial Court to the effect that the disputed property was proved to have been owned by Kailash Nath had not at all been challenged by the appellants by filing any cross appeal/objections before learned First Appellate Court. Neither any contention was raised before learned First Appellate Court that the findings given by learned trial Court on that point were assailable. In view of the discussion as made above, it emerges that the evidence produced on record by the respondent-plaintiff was sufficient to prove that the disputed property which was measuring 30 feet x 42 feet, and the boundaries of which were shown in the head note of the plaint was actually owned by Kailash Nath and after his death by Smt. Punna Devi and then by way of inheritance, the respondent-plaintiff had become owner of the same. As such, the findings as

given by learned First Appellate Court on this point deserve to be upheld.

16. The next question that arises for consideration is as to whether the findings as recorded by learned First Appellate Court holding that the respondent-plaintiff was in possession of the disputed property and was entitled to seek the relief of injunction were based on proper appreciation of material placed on record or not. At the cost of repetition, it may be stated that the learned trial Court had held that the respondent had failed to produce any clear evidence to establish his possession over the disputed property whereas the learned First Appellate Court had held that since the respondent was proved to be owner of the disputed property which was a vacant plot and as possession of vacant plot goes with title, therefore, he was also proved to be in possession of the same. The appellants-defendants had tried to establish their possession over the disputed property by claiming that they used to tie their cattle and prepare cow dung cakes over the same. DW-3 deposed so and also stated that Smt. Kamla Devi wife of vendor Chint Ram had told him to make cow dung cakes and tie his cattle at the disputed property and also stated that none including the respondent had stopped him from doing so. The disputed property is unquestionably a vacant plot of land. It is well settled proposition of law that possession follows title which as discussed above is proved to be owned by the respondent. Reference in this regard can be made to authority cited as **Navalram Laxmidas Devmurari v. Vijayaben Jayvantbhai Chavda**, 1997 SCC OnLine Guj 83, wherein it was observed by High Court of Gujarat that the concept of possession is an abstract one. The ordinary presumption is that possession follows title. Presumption of possession over

an open land always is deemed to be that of the owner and not of the trespasser. An open place of land shall be presumed to be in possession of the owner unless it is proved by the trespasser that he had done some substantial acts of possession over the land which may invite the attention of the owner, that he has been dispossessed. An owner of open land is ordinarily presumed to be in possession of it and this presumption becomes strong in his favour when the defendant fails to establish the ground on which he claims to have come in possession. Reliance can further be placed upon **Prataprai N .Kothari v. John Braganza**, (1999) 4 Supreme Court Cases 403, wherein it was observed as follows:-

“If not for any other reason, at least on account of the doctrine of law that possession follows title, the defendant must be held entitled to be in full possession of the open space”.

17. The Hon'ble Apex Court had also discussed this principle in case cited as **Indore Development Authority v. Manoharlal**, (2020) 8 SCC 129, wherein it was observed as under:-

“The concept of possession is complex one. It comprises the right to possess and to exclude others, essential is animus possidendi. Possession depends upon the character of the thing, which is possessed. If the land is not capable of any use, mere non-user of it does not lead to the inference that the owner is not in possession. The established principle is that the possession follows title. Possession comprises of the control over the property. Corpus and animus are both necessary and have to co-exist. A person with title is considered to be in

Neutral Citation No.2023:PHHC:055445

actual possession. The other person is a trespasser. The possession in law follows the right to posses.”

18. On applying the above discussed well established principles of law to the peculiar facts and circumstances of the instant case, wherein the appellants claimed possession on the basis of acts of tying cattle and placing cow dung cakes, in the opinion of this Court, on the basis of mere these acts, the appellants could not be held to be in possession of the disputed property as it is also well settled that tethering of cattle or preparing cow dung cakes etc. over an open land cannot be taken as proof of exclusive possession as it is common in the villages to tether cattle and place cow dung cakes in open spaces and the same cannot be allowed to be used as evidence to grab land by any other person. In this regard, reliance can further be placed upon judgment dated 01.04.2005 passed by Delhi High Court in RFA No.134 of 1982 titled as **Shahabuddin v. State of U.P. and others**, wherein similar observations were made. Reliance can also be placed upon **Bhan Singh and others v. Tej Singh and others**, 1997 (1) RCR (Civil) 46 wherein a Bench of this Court had observed that mere acts of user, such as throwing rubbish, placing dung cakes, tethering cattles, installation of pegs may be weak links to say that a particular litigant is using the property but such user has to be secluded separately from the acts of possession, for which overt act, it is necessary for the litigant to establish that he had been exercising his possession over the disputed property with the intention to retain it. Therefore, the claim of the appellants based on the plea that they were tethering cattle and placing cow dung cakes over the disputed property cannot be taken to mean their possession over the

Neutral Citation No.2023:PHHC:055445

disputed property in any manner whatsoever. As such, this Court has no hesitation to hold that the appellants failed to produce any convincing, satisfactory and reliable evidence on record to prove that they were in possession of the disputed property and were entitled to retain the same, as against the land in dispute which though is lying open and vacant but which as per presumption of law in favour of the owner would be deemed to be in possession of the respondent-plaintiff. As per the discussion as made above, it is held that the appellants have not been able to establish their title in the disputed property and legality of its possession whereas the evidence produced on record by the respondent with regard to his having title over the disputed property could not be rebutted which also established his possession on the principle that possession followed title. As such, the substantial question of law does not deserve to be decided in favour of the appellants. Rather the same is decided in favour of the respondent. Accordingly, finding no merit in the appeal, the same is dismissed.

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

19.4.2023
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No