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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: March 17, 2023

Satbir @ Satbir Singh and another

....Appellants

versus

Subhash Chand and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Jarnail Singh Saneta, Advocate for appellants.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant-defendants are in second appeal before this Court assailing learned trial Court judgment and decree dated 14.12.2019, as upheld by learned First Appellate Court vide its judgment and decree dated 20.01.2023, decreeing the suit of plaintiff-respondents for permanent injunction for restraining defendant-appellants from interfering in their peaceful settled possession over suit property.

3. Briefly stated, facts, as noticed by learned Courts, are as below:

3.1 Haryana Wakf Board is the owner of the suit property, which was leased out in favour of father of plaintiffs, namely, Late Sh. Tilu Ram S/o Roshan Lal & plaintiff No.1 jointly vide Lease order no.24/Lease-Urban/F no. 1369/515/9643 dated 28.10.1985 w.e.f. 01.08.1984. After completing the lease formalities, plaintiffs were originally put in actual physical possession of plot measuring 78 sq. yards (including the suit property) by local official of the Wakf Board, Panipat for using the same. Plaintiffs thus came into the possession of suit

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property. They had been regularly depositing the rent in terms of the aforesaid lease deed, as and when demanded by the Haryana Wakf Board.

3.2. Out of the total allotted area of 78 sq. yards, the plaintiffs and their father Tilu Ram surrendered possession of plot measuring 35 sq. yards in favour of one Mulak Raj S/o Faqir Chand who then surrendered it to one Mida and later, Mida surrendered it to Dharambir S/o Nirmal Dass. Father of plaintiffs & plaintiff No.1 thus remained in possession over plot measuring about 43 sq. yards as on the spot. After death of Tilu Ram, plaintiff No.2 being his son stepped into his shoes along with plaintiff No.1.

3.3. Defendants also got on lease a shop over plot measuring about 20 sq. yards vide lease order dated 24/Lease-Urban/F no. 1009/98/21612 dated 27.03.1999 w.e.f. 01.11.1998 @ rent as Rs. 400/- per month. Plots in possession of plaintiffs and the defendants are totally separate, as shown on overleaf of their respective lease orders. However, in June 2015, defendants started to proclaim that they were owners-in possession of suit property by way of registered sale deed. On 14.07.2015 at about 10:00 a.m., defendants along with 10-12 notorious people came over suit property and tried to interfere in possession of plaintiffs forcibly/illegally, but could not succeed due to timely intervention of respectable persons of locality as well as local police of Police Post Tehsil Camp, Panipat.

3.4. On 09.01.2017, defendants again came at the suit property and tried to interfere in peaceful possession of the plaintiffs. Defendant No.2 Sunita claimed to be owner of suit property vide Transfer Deed executed by defendant No.1 in her favour, although they were absolute strangers to suit property. It was in the possession of plaintiffs as lessees of Haryana Wakf Board, which was owner thereof. Although Wakf properties are inalienable, defendants succeeded in forging and fabricating the alleged sale deed to lay a claim on the suit property.

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4. Upon notice, defendants filed a joint written statement taking preliminary objections regarding maintainability, cause of action, locus standi, mis-joinder and non-joinder of parties and concealment of material facts.

4.1. It was averred that suit property shown by plaintiff as Khasra No.3897 min, was actually Khasra No.3896. But plaintiff was misrepresenting facts for grabbing valuable property of defendants. Defendants were owners-in-possession of suit property since 1994 through GPA and affidavit Sh. Fakir Chand S/o Sohna Mal. Subsequently, defendants purchased 76 sq. yards in the total part of Khasra no. 3897, i.e., 3 Biswas on 06.05.2015 vide sale deed bearing VasikaNo.1391 dated 27.05.2015. A sale certificate was issued by Tehsildar Sales, Panipat in this regard. Defendants had been using suit property for commercial purposes since beginning, i.e., since 1994. When suit property was in possession of defendants, there was no question of their interfering in plaintiffs' possession over the same. Remaining contents of the plaint were denied and dismissal of suit was prayed for.

5. Based on the rival pleadings, following issues were framed:

- “1. Whether the plaintiffs are entitled for a decree of permanent injunction as prayed for? OPP.
2. Whether the suit is not legally maintainable? OPD
3. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
4. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD
5. Whether plaintiffs have not come with clean hands and have concealed material facts of the court? OPD
6. Relief.”

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issue No.1 in favour of plaintiffs. Issues No.2 to 5 were decided against defendants. Consequently, learned trial Court decreed the suit of plaintiff-

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respondents restraining the defendants permanently from interfering in possession of plaintiffs over plot measuring 36.34 sq. yards comprised in Khasra No.3897, originally allotted jointly to father of plaintiffs Tillu Ram and plaintiff No.1 Subhash Chand as lessee of Waqf Board during pendency of their lease.

8. Feeling aggrieved against the said judgment and decree dated 14.12.2019, appellants-defendants preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“20. *From the arguments advanced by the learned counsel for the parties, and the evidence on record the following points call for determination from this Court.*

POINT FOR DETERMINATION:-

Question: Whether the plaintiffs are in possession of a plot measuring 43 Sq.yards comprised in khasra no.3897 min?

Question: If yes, whether the plaintiffs are entitled for the relief of permanent injunction against the defendants?

ANALYSIS AND FINDINGS :-

21. *Having heard the rival contents of learned counsel for the parties and after carefully scrutinizing the evidence on record, this Court is of the considered view that the appeal is liable to be dismissed for the following reasons:-*

22. *The foremost, plea of the plaintiffs is that the suit property was situated in khasra no.3897min. This fact is reflected from the allotment letter dated 28.10.1985 i.e., Ex.P2. The defendants on the other hand have claimed that the suit property was situated in khasra no.3896. When initially the plaintiffs had discharged defendants to prove that the suit property was situated in khasra no.3897min by placing of the file the allotment letter Ex.P2, the onus shifted to the onus to prove that infact it was not in khasra no.3897min, and rather it was situated in khasra no.3896. The possible solution to this controversy would have been the appointment of a Local Commission for demarcation of the khasra numbers and identification of the suit property. The defendants did not take recourse to such a measure. The rent receipts Ex.P9 and Ex.P10 show that the plaintiffs had been paying rent for land measuring 36.34 Sq.yards at least till 03.11.2016. The necessary corollary thus is that the plaintiffs were in possession of land measuring 36.34 Sq.yards in khasra no.3897 min, Patti Insar, Panipat. There is no evidence on record that their tenancy has ever been terminated.*

23. *The plaintiffs have sought an injunction against the defendants qua the property situated in khasra no.3897min. The defendants have not claimed any right in khasra no.3897min, instead have claimed their right, title and interest over some property situated in khasra no.3896. Apparently, the properties mentioned by the plaintiffs and defendants are separate and different and thus, the plaintiffs are entitled to protect their possession over the land situated in khasra no.3897min.*

24. *Secondly, learned counsel for the appellants/defendants has argued that the plaintiffs were not in possession of any portion of khasra no.3897min. The said khasra number was owned and possessed by PWD-B&R Department and a road had been constructed over the same. In this regard reference has been made to jamabandi for the year 1978-79 Ex.D3. As per jamabandi, the Government of Haryana was recorded as owner of khasra no.3897min and it was in possession of PWD-B&R colony. In this regard a reference may also be made to document Ex.P11 i.e. original gazette notification dated 30.06.1984 of the Government of India as per which khasra no.3896 and 3897 were recorded under the ownership of Dargah HaziWali Mohammad Saheb under the Direct Management of Secretary Punjab Wakf Board as Ex-officio Mutwalli. Moreover, the Court in this case is not concerned with the title of ownership of the suit property, rather the concern of the Court is with regard to possession of a particular khasra number. When it has already been observed hereinabove that the lands of khasra nos.3897 and 3896 were separate and distinct, the learned Lower Court was well justified in restraining the defendants from interfering in the peaceful possession of the plaintiff over their plot measuring 36.34 Sq.yards comprised in khasra no.3897min, Patti Insar, Panipat.*

25. *In view of the foregoing discussion, the appeal is without merits and the same stands dismissed with costs. Decree-sheet be drawn. Lower Court record be sent back to the quarter concerned with a copy of this judgment. The appeal file be consigned to the record room after due compliance.”*

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

12. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no

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substance in the submissions that the impugned judgments are based on conjectures and surmises.

12.1 No new arguments have been raised other than reiteration of the stand taken before the courts below.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

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

18. No order as to costs.

(ARUN MONGA)
JUDGE

March 17, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No