

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 676 of 1996 (O&M)

Date of decision : 20.1.2023

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Inderjit

.....Appellant

vs.

Bal Kishan and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None for the appellant

Mr. V. Ramswaroop, Advocate for the respondents.

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H. S. Madaan, J.

1. Again there is no representation on behalf of the appellant. The case relates to the year 1996, as such I proceed to decide the same, with the assistance of learned counsel representing the respondents and after going through the record.

2. Briefly stated, facts of the case are that plaintiffs – Bal Krishan and his brother Baldev Ram, sons of Ram Chand s/o Ram Saroop, Ram Rattan son of Ram Chand, Ashok Kumar as well as Anil Kumar – sons, Neelam Kumari and Arun Kumari – daughters and Smt. Pushpa Wati – widow of Ram Saroop, all residents of village Birampur, Tehsil Garshankar, District Hoshiarpur, had brought a suit against defendant Shadi Ram, Inderjit, Surinder Kumar, Subhash Chander and Shakti Kumar sons of Jagan Nath, residents of that very village, seeking a declaration that they are owners in possession of plot described in head note of the plaint and in the site plan attached

therewith, besides seeking decree for permanent injunction, restraining the defendants from interfering in their possession over the said plot and in the alternative craving for possession of the plot as exclusive owners. Another relief sought is decree for mandatory injunction directing the respondents to restore the site to the plaintiffs, so as to bring it to the original position as public street by removal of all sorts of constructions, illegally raised by them, as well as seeking permanent injunction restraining the defendants from causing any sort of objections by raising constructions etc., or by any other means in the same in future.

3. Notice of such suit was given to the defendants. Only defendant no.2 appeared and filed written statement, contesting the suit, whereas the remaining defendants did not opt to put in appearance and were proceeded against ex parte.

4. Defendant No.2 had contested the suit raising various legal objections, on merits denying that Sh. Ram Chand predecessor in interest of the plaintiffs was originally owner of the plot or that the defendants are owners in possession of the plot presently. Rather the defendant No.2 is in possession of the plot in dispute and using it since 1947, considering himself to be the owner of the same, as such having become owner by way of adverse possession. According to such defendant, the said plot is an evacuee property. With regard to street marked ABGH, the defendant submitted that it was not a public street but a part of the disputed plot in suit and it is in possession of answering defendant as owner. Refuting the remaining allegations, he prayed for dismissal of the suit.

5. Replication was filed. From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiffs are owners in possession of the plot marked as ABCDEF as alleged ? OPP
- 2) Whether the plaintiffs are entitled to possession of the plot ABCDEF, if they are not proved to be in possession? OPP
- 3) Whether the sit marked ABGH is a public street as alleged? OPP
- 4) Whether the plaintiffs are entitled to the mandatory injunction as alleged ? OPP
- 5) Whether the defendant No.2 is the owner in possession of the plot marked as ABCDEF by way of adverse possession? OPD
- 6) Whether the plot in disputes marked ABCDEF is evacuee property ? OPP
- 7) Whether the defendant no.2 has purchased plot No. 160 and 161 from Mohinder Singh etc. as alleged ? OPD
- 8) Whether the plaintiffs are estopped from filing this suit as alleged ? OPD
- 9) Whether this Court has got no jurisdiction to try this suit ? OPD
- 10) Whether the suit is hit by principle of res judicata? OPD
- 11) Whether the site marked ABGH is part of evacuee

property as alleged ? OPD

12)Relief.

6. Parties were afforded adequate opportunities to lead evidence in support of their respective claims. During the course of evidence, the plaintiffs examined one of the plaintiffs – Ashok Kumar as PW1, Inder Singh son of Deva Singh as PW-2, Chanan Ram, Patwari Halqa, Hajipur as PW-3 and thereafter closed their evidence after tendering a copy of sale deed as Exhibit P5.

7. Defendant No.2 in his evidence, examined himself as DW-1, Chuhar Singh son of Bulla as DW-2, Tarsem Chand son of Mehar Chand as DW-3, Mohan Lal son of Lal Chand as DW-4 and thereafter closed his evidence after tendering application dated 8.9.1989 as Exhibit D-1.

8. Again the plaintiffs were granted an opportunity to lead evidence in rebuttal, when they examined Gurmeet Singh, Registration Clerk as PW-4, Mohinder Singh son of Gopal Singh as PW-5

9. After hearing the arguments, vide judgment dated 27.7.1992, the Court of Sub Judge III Class, Garshankar, decreed the suit of the plaintiffs partly, passing a decree for declaration to the effect that plaintiffs are owners of the plot marked ABCDEF as fully described in the headnote of the plaint and that they are entitled to get possession of the said plot from the defendants. However, suit for permanent injunction and mandatory injunction as claimed, was dismissed.

10. Both the parties felt aggrieved and had challenged the

judgment and decree passed by the trial Court before the District Court at Hoshiarpur, who decided both the appeals vide common judgment dated 22.8.1995. as a result thereof, the judgment and decree passed by the trial Court were maintained and both the appeals were dismissed.

11. Still feeling aggrieved, defendant No.2 Inderjit Singh had approached this Court by way of filing the present regular second appeal, notice of which was given to the respondents-plaintiffs, who have put in appearance through counsel. Subsequently, there has not been any representation on behalf of the appellant for several last dates of hearing, for which notice had been issued to the learned counsel who had been appearing for the appellant earlier.

12. After hearing learned counsel for the respondent and going through the record, I find that both the court below on proper analysis of evidence adduced by both the parties in light of the facts and circumstances of the case and legal position on the point, had returned a finding that plaintiffs are owners in possession of the plot marked ABCDEF of which defendant No.2-present appellant, was found to be in wrongful possession. The plea of defendant No.2 that he has become owner by way of adverse possession was considered and rejected. However, the site marked as ABGH was found to be street and plaintiffs were not found entitled to relief of permanent and mandatory injunction. The case set up by defendant No.2 in the written statement was rejected.

13. I find that the judgments passed by the court below are quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein requiring any interference by this Court in the regular second appeal.
14. No substantial question of law arises in the present appeal.
15. The appeal is found to be without any merit and the same stands dismissed accordingly.

20.1.2023
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(H.S. Madaan)
Judge

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