

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.788 of 2001 (O&M)

Date of Decision: 05.01.2023

Joginder Singh

.....Appellant

Versus

Avtar Singh @ Brella and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present : Mr. Malkeet Singh, Advocate,
for the appellant.

Mr. P.S. Hundal, Senior Advocate, with
Mr. Vikramjeet Singh, Advocate,
for respondents No.1 to 5.

ARUN PALLI, J. (Oral):

Suit filed by the appellant-plaintiff (Joginder Singh) was dismissed by the trial court, vide judgment and decree dated 24.02.1999. And, as even the appeal preferred against the said decree failed and was dismissed on 26.7.2000, he is before this Court, in Regular Second Appeal.

Parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

The plaintiff prayed for a declaration that he was owner in possession of the suit property (residential house), shown in red colour in the site plan, and a consequential relief of injunction to restrain the defendants from causing any interference in his peaceful possession.

In brief, the case set out by him was that suit property was purchased by his grandfather (Hari Singh) from Pritam Singh, vide different sale deeds dated 26.03.1959, and, post death of Hari Singh, his estate was inherited by his heirs. However, after father of the plaintiff, namely Jaswant

Singh, passed away, a dispute arose amongst his heirs, which was resolved, vide an oral family partition. And, for the suit property, pursuant to the oral family partition, had fallen to the share of the plaintiff, he acquired title thereto and entered possession. But, as defendants were causing interference in his possession, a dispute arose between the parties, which was settled with the intervention of the village Panchayat, Bundala, and a writing dated 24.04.1994, was recorded in this regard. However, the defendants still did not desist from their activities, thus, the suit.

Defendants No.1 to 5 contested the suit and controverted the claim of the plaintiff. The defence set out by them was that no such house ever existed at site, as claimed by the plaintiff. In fact, after obtaining *ex parte* injunction from the court, the plaintiff forcibly tried to occupy the area/land that belonged to the village Gurudwara situated in village Bundala, Tehsil and District Amritsar. And said Hari Singh was neither owner nor was he ever in possession of the suit property.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that plaintiff himself conceded in his statement that boundaries of the suit land did not tally with the boundaries of the property, that was allegedly purchased by his grandfather, vide sale deed dated 26.03.1959. No other evidence was led by the plaintiff to prove his ownership/title over the suit property. As regards the settlement (Ex.PW2/2), arrived at between the parties, owing to the intervention of the village Panchayat, a bare analysis of the said document would not show that plaintiff was either the owner or even in possession of the suit property. Rather, the alleged settlement would reveal that it related to some path and not any house alleged to be in existence upon the suit land.

Ex facie, the plaintiff claimed ownership over the suit land through his grandfather (Hari Singh). But, once he failed to prove that Hari Singh was owner of the suit property or he ever acquired any title thereto, the alleged family partition, pursuant to which the suit property allegedly fell to the share of the plaintiff, was inconsequential. Even otherwise, a perusal of his testimony would show that he did not even remotely claim that he acquired the suit property as a result of oral family partition. Further, it was not his case either that alleged family partition was either reported to the concerned revenue official or was given effect to in the records of rights. As indicated earlier, the declaration prayed for by the plaintiff, as regards ownership and possession, was in respect of a residential house that allegedly existed in the suit land. Significantly, in his examination-in-chief itself, the plaintiff deposed that he was yet to construct his house. Although, he claimed to be in physical possession of the suit property, along with his two brothers, but that was not the case set out by him in the suit either. Similarly, Gurdeep Singh (PW3), admitted in his statement that post institution of the suit, the plaintiff had raised one wall over the suit property. In the wake of the above, and in the absence of any conclusive evidence to prove that plaintiff was in actual/physical possession of the suit land, the testimonies of Kulwant Singh (PW2), Gurdeep Singh (PW3), Tarlok Singh (PW4), Shingara Singh (PW5) and Piara Singh (PW6) were hardly of any consequence. The argument that Bachan Singh (DW1) had admitted in his statement that **at present**, the suit property was in possession of the plaintiff would also not advance the claim of the plaintiff, since for determining possession and granting injunction, the position prevailing at the time of institution of the suit alone, was to be examined. And, in any event, the

position of law was settled that plaintiff was required to prove his claim, and could not draw any strength/benefit from the weakness in the evidence led by the defendants. Concededly, the onus to prove that plaintiff was owner in possession of the suit property, lay upon him, which he apparently failed to discharge. Thus, the only and the inevitable conclusion that could be reached was: suit was liable to be dismissed.

Upon being pointedly asked, learned counsel for the appellant failed to refer to anything on record to show if the conclusion concurrently recorded by both the courts below was either perverse or contrary to the record.

That being so, no ground is made out to interfere with the impugned judgment and decree. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

05.01.2023
AK Sharma

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