

RSA-2445-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2445-2023 (O&M)
DECIDED ON: 19.10.2023

PUNJAB AGRICULTURAL UNIVERSITY, LUDHIANA

.....APPELLANT

VERSUS

PARGAN SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Ms. Amisha Batra, Advocate for Mr. Gurbhajan S. Naggar,
Advocate for the appellant.

Mr. Vivek K. Thakur, Advocate for the respondent-caveator.

VIKRAM AGGARWAL, J

CM-8221-C-2023

Prayer in the present application moved under Order 41 Rule 27 CPC is to produce two documents namely notification issued by the Punjab Government on 01.02.1963 as Annexure A-1 and notification dated 28.09.1966 as Annexure A-2.

It has been averred in the application that the notification dated 28.09.1966 was duly exhibited as Ex.D-3 but despite due diligence, notification dated 01.02.1963 could not be produced in evidence. It has been averred that that the same is important for the fair and just decision of the appeal.

Learned counsel for the applicant has submitted that the notifications sought to be produced are important for the just decision of the case.

I have gone through the application and have also considered the submissions made by learned counsel for the applicant but find the same to be

devoid of merit. The notification dated 28.09.1966 is already on the record of the case as has been mentioned in the application also. In so far as the notification dated 01.02.1963 is concerned, learned counsel has not been able to point out its relevance and why it could not be produced earlier.

I have gone through the notification also and do not find it to be important for the decision of the case.

In view of the above, the application is dismissed.

RSA-2445-2023 (O&M)

1. This is defendant's second appeal filed against concurrent findings recorded by the Courts below in favour of the respondent-plaintiff. A suit for possession was filed by the respondent-plaintiff qua land measuring 9 Kanals 7 Marlas (fully described in the plaint) situated in Kapurthala, Sharka, Tehsil and District Kapurthala (hereinafter referred to as the 'suit land') on the basis of demarcation report dated 05.07.2016. Relief of permanent injunction restraining the appellants-defendants from raising any sort of construction over the suit land was also sought.

2. The case set up by the respondent-plaintiff was that he was the owner of the suit land. The requisite entries were there in the revenue record. Previously the appellants-defendants had illegally tried to interfere into his possession over the suit land. A civil suit for injunction had been filed by the respondent-plaintiff which was decreed on 16.05.2016. After the passing of the said decree, demarcation of the suit land was carried out. It is at that point of time, it came to the notice of the respondent-plaintiff that some land had been encroached by the appellants-defendants. The respondent-plaintiff requested the appellant-defendant to vacate the land but they refused. Under the circumstances, the suit was filed.

3. The appellants-defendants contested the suit. Preliminary

objections with regard to maintainability, the appellant-defendant being the owner in possession of the suit land, having been in adverse possession of the same, the suit being bad for non-joinder or mis-joinder of necessary parties etc. were raised. It was averred that the revenue entries were wrong and that the appellant-defendant had become owner of the suit land by way of adverse possession as the appellant-defendant was in possession of the suit land since 1966. It was averred that the adjoining land had been allotted to Rice Research Center, Kapurthala vide notification dated 28.09.1966. Since then, the suit land alongwith the allotted land had been encircled with boundary of barbed wire and eucalyptus trees. It was averred that the respondent-plaintiff had tried to take possession of the suit land in 1997 and, thereafter, in 2011 but he was not permitted to do so. It was averred that crop of the appellant-defendant was sown in the suit land.

4. In the replication, averments made in the written statement were denied and those made in the plaint were reiterated.

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

- “1. Whether the plaintiff is entitled to the relief of suit for possession, as prayed for? OPP*
- 2. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP*
- 3. Whether the suit in the present form is not maintainable? OPD*
- 4. Whether the suit is barred by Limitation? OPD*
- 5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
- 6. Relief.”*

6. Parties led their respective evidence. The trial Court decreed the suit filed by the respondent-plaintiff. The appeal filed by the appellant-defendant was also dismissed leading to the filing of the present appeal.

7. I have heard learned counsel for the parties.

8. Learned counsel for the appellant-defendant submitted that the Courts below have erred in decreeing the suit filed by the respondent-plaintiff. Learned counsel referred to the findings recorded by the Courts below and submitted that the same are not sustainable. Efforts were made to convince this Court that the suit land is not under illegal possession.

9. On the other hand, learned counsel representing the respondent-caveator submitted that there is no illegality in the findings recorded by the Courts below.

10. I have considered the submissions made by learned counsel for the parties.

11. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including '*Hero Vinoth (minor) versus Seshammal*' **2006 (5) SCC 545**, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in '*Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors.*' **2019 (3) R.C.R. (Civil)** and '*Satyender and Ors. Versus Saroj and Ors.*' **2022 (12) Scale 92** respectively.

12. The respondent-plaintiff based his claim upon the revenue record as also the previous judgment and decree dated 16.05.2016 apart from the

demarcation report dated 05.07.2016. Jamabandi Ex.P-1 proved the ownership of the respondent-plaintiff. Judgment and decree dated 16.05.2016 Ex.P-2 and P-3 also proved that injunction had been issued in favour of the respondent-plaintiff with regard to the suit land. Demarcation report dated 05.07.2016 Ex.P-4 divulged that the suit land had been encroached upon by the appellant-defendant. Apart from the respondent-plaintiff who stepped into the witness box as PW-1, Sukhwinder Singh Numberdar appeared as PW-3 and deposed about the ownership and possession of the respondent-plaintiff qua the suit land. PW-4 Satwinder Singh, who was an official from the office of Deputy Commissioner, Kapurthala, proved the demarcation report dated 05.07.2016 Ex.P-4. The demarcation report was also proved by PW5-Kanwaljit Singh, who was a Kanungo of the concerned area. On the other hand, the witnesses examined by the appellant-defendant gave away its case. Veer Singh, who was a technical assistant in the University, appeared as DW-1 and in his cross-examination admitted that the University was in illegal possession of the suit land. Similarly DW6-Onkar Singh admitted that as per the revenue record, the respondent-plaintiff was the owner the suit land.

13. In so far as the plea of adverse possession is concerned, no specific pleadings were there as to when the appellant-defendant had come into possession of the suit land and when the possession had become adverse. Once the suit for permanent injunction had been filed by the respondent-plaintiff and the same had been decreed in 2016, it cannot be said that the appellant-defendant was in adverse possession of the suit land. In fact, once the appellant-defendant did not specifically admit the ownership of the respondent-plaintiff over the suit land, the claim of adverse possession would also not survive. Even in Parcha Dakhal Ex.D-2 which was on 27.04.1992, it had come that the appellant-defendant was in illegal possession of the suit

land and had sown a rice crop and that the possession had been handed over to the respondent-plaintiff. It, therefore, means that the possession of the appellant-defendant over the suit land was illegal possession and was not open or unobstructed. The revenue record also did not mention the possession of the appellant-defendant which further goes on to show that the possession was illegal. Had the same not been illegal, steps could have been taken to get the revenue record corrected.

14. There is another aspect of the matter. The plea of adverse possession was never raised previously. The plea was raised only in the present suit and was not raised in the prior suit for permanent injunction filed by the respondent-plaintiff. Even the demarcation report Ex.P-4 mentioned that the officers of the appellant-defendant were present on the date of demarcation but they refused to sign the same. The appellant-defendant never challenged the demarcation report nor any request for fresh demarcation was made. Under the circumstances, the said plea would also not be sustainable.

15. This Court, is, therefore, of the firm opinion that no illegality was committed by the Courts below in decreeing the suit filed by the respondent-plaintiff and that the findings do not call for any interference.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

19.10.2023
Prince Chawla

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