

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2408-2022(O&M)

Date of decision:-7.2.2023

Telu Ram(now deceased) through his LRs

...Appellants

Versus

Rajpal and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gurpreet Singh, Advocate
for the appellants.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Rajpal and Krishan both sons of Sh.Jeet Ram had brought a suit against defendant Telu Ram (since dead) now being represented by his LR's for possession with consequential relief of permanent injunction restraining the defendant from transferring the possession of land comprised in Khewat No.305/277, Khatoni No.550, Rect.No.23, khasra No.132(0-5) gair mumkin bara and Khasra No.133(0-5) gair mumkin bara situated within revenue estate of village Nimbri, Tehsil and District Panipat and from changing its nature.

2. As per the case of the plaintiffs, they are permanent residents of village Nimbri, District Panipat having right, title and interest in Gora

Deh, Abadi Deh and Shamlat Deh of the said village; they are agriculturist by profession; they are owners of the suit property in which they had raised construction of a room and they had been using the property for tethering cattle, parking of tractor and other agriculture implements; they had demolished the room for re-construction and extension of the rooms for the purpose of collection of chaff for cattle; however on 28.10.2011 at about 7:00 p.m. the defendant came and asserted that the suit property belonged to him; he threatened to construct a house over the suit property availing of monetary help provided by the Government under BPL scheme; the plaintiffs had lodged a complaint with Sarpanch of village Gram Panchayat besides informing the police but to no effect; on 2.11.2022 defendant along with some ante social element came to the suit property and tried to dispossess the plaintiffs therefrom but that attempt was warded off. Feeling threatened the plaintiffs had filed the suit in the Court. However, during the pendency of the suit the defendant was successful in dispossessing the plaintiffs from the suit property forcibly and illegally on 15.3.2012. Therefore, the plaintiffs sought possession of the suit property being owners of the same.

3. On notice, the defendant had appeared and filed a written statement contesting the suit taking various legal objections, on merits denying that the plaintiffs are owners of the suit property or they had been in possession thereof or for that matter the defendant had taken forcible possession of the suit property from the plaintiffs, rather the defendant claimed himself to be in possession of such property since 22.3.1962 as absolute owner contending that he had purchased that property from the

father of the plaintiffs, which is located within red line of the village Nimbri and further the defendant has become owner of the suit property by way of adverse possession; he has constructed a room in the suit property and has renovated another room standing there after demolition of the earlier room; his ownership and possession over the suit property is known throughout the village.

According to the defendant the plaintiffs had never remained in possession of the suit property since 22.3.1962 till date; the defendant denied that plaintiffs had raised any construction in the suit property or they had been using it for tethering their cattle, parking tractor and agricultural implements or that he had taken illegal and forcible possession of the suit property from the plaintiffs on 15.3.2012. The defendant prayed for dismissal of the suit.

4. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled for the relief of possession alongwith a consequential relief of permanent injunction restraining the defendant Telu Ram from transferring the possession of the suit property comprised in khewat no.305/277, khatoni no.550, rect. no.23, khara no.132(0-5) gear mumkin bara and khasra no.133(0-5) gear mumkin bara, situated within the revenue estate of village Nimbri, Tehsil and District Panipat as per jamabandi for the year 2007-08 and also from changing nature of the suit property? OPP.
2. Whether the plaintiffs have not come to the Court with clean hands? OPD.

3. Whether the plaintiffs have no cause of action to file the present suit? OPD.

4. Relief.

5. The parties were afforded opportunities to lead evidence in support of their respective claims.

6. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Panipat decided issue No.1 in favour of the plaintiffs and against the defendant; issues No.2 and 3 were also decided in favour of the plaintiffs and against defendants. As a collective effect of finding on the issues, the trial Court vide judgment and decree dated 8.3.2016 decreed the suit of the plaintiffs and defendant was directed to hand over the vacant possession of the suit property to the plaintiffs within two months from the date of passing of the judgment and decree. Furthermore, the defendant was restrained from transferring the possession of the suit property and from changing nature of the suit property.

7. Feeling aggrieved by the said judgment and decree, the LRs of defendant had filed an appeal in the Court of District Judge, Panipat, which was assigned to Additional District Judge, Panipat, who vide judgment and decree dated 7.7.2022 dismissed the appeal with a modification to the effect that plaintiffs shall be entitled to possession of the suit property subject to affixation of ad valorem Court fee within three months from date of judgment and the defendants were restrained from raising any construction over the suit property or transferring the same in favour of any person.

8. Being dissatisfied with the judgments and decrees passed by the Courts below, the LR of defendant has filed the present regular second appeal before this Court.

9. I have heard learned counsel for the appellants besides going through the record and I find that there is no merit in the present regular second appeal.

10. Both the Courts below in light of the pleadings of the parties, analyzing the evidence brought on record by the contestants in a minute and analytical manner considering the settled legal position on the subject have returned concurrent findings that the plaintiffs are owners of the suit property and defendant had been in illegal and unauthorized possession of the same, therefore was liable to hand over the vacant possession to the plaintiffs and he was restrained from transferring possession to anybody else and from changing nature of the suit property.

11. The Courts below have taken into consideration the fact that in jamabandi Ex.P3, the plaintiffs are recorded as owners in possession of the suit property. Plaintiff Rajpal appearing as PW1 has also stated so in his affidavit Ex.PW1/A. PW3 Satpal Singh, Retd. Kanungo in his affidavit Ex.PW3/A stated that as per orders of Tehsildar, he had gone to the spot and carried out demarcation of Khasra No.24/1/1, Bara No.132-133. He had demarcated the plots which were under ownership of Rajpal and Krishan i.e. the plaintiffs in this case, however, those plot were found to be in possession of Telu Ram son of Rehtu Ram. He had proved his report submitted in Tehsildar Office as Ex.PW2/A and computerized copy as Ex.PW2/B.

PW4 Jagbir had supported the case of the plaintiffs, whereas PW2 Balwant Singh, Asstt., BDPO proved original application of Telu Ram and other documents submitted by him as Ex.PW1/A to Ex.PW1/H. The plaintiff Rajpal appearing as PW1 had repeated on oath the case as given in the plaint. As against that defendant Sunita had appeared as DW1, Birma as DW2, Surender as DW3, Rohtash, Draughtsman as DW4, Balwan Singh, Assistant office of BDPO, Panipat as DW5 and Retd. Patwari Dharam Singh as DW6.

12. A thorough perusal of the evidence brought on record by the parties goes to show that plaintiffs had proved in evidence jamabandi for the year 2007-08 as Ex.P2 and khasra girdawari for the year 2010-11 as Ex.P8 showing that plaintiffs were owners in possession of the suit property. As against that deceased defendant Telu Ram had claimed that he had purchased the suit property from the father of the plaintiffs in 1962 vide a written document Ex.DW6/A. However, DW6/A was not proved properly examining Jeet Ram father of the plaintiffs, who was alive at that time.

13. As far as the writing said to have been executed by father of the plaintiffs in favour of the defendant that was rightly not relied upon being an unregistered document. Since in view of Section 17 of the Registration Act all the documents of sale of immovable property worth more than Rs.100/- require compulsory registration. The consideration amount, which had allegedly passed from defendant to father of the plaintiffs was Rs.410/-, therefore the writing required compulsory registration when it was not so and in terms of Section 49 of the

Registration Act this document was rightly not taken into consideration.

The defendant had taken alternative plea of adverse possession but that too could not be established by the defendant/his legal representatives.

14. The defendant being unable to prove any title to the suit property or any valuable right being there the possession of defendant was rightly held to be unauthorized by the Courts below, which the plaintiffs being owners had every right to take from the defendant.

15. The judgments and decrees passed by the Courts below are quite detailed and well reasoned, based on proper appraisal of evidence and correct interpretation of law, which do not call for any interference.

16. No substantial question of law arises in this appeal.

17. Finding no merit in the appeal, the same stands dismissed.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

7.2.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No