

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.201

RSA No.2430 of 2016 (O&M)

Date of Decision: 24.01.2023

Bhupinder Singh

.... Appellant

Versus

Anokh Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Anil Kumar Garg, Advocate for the appellant.

Mr. Sherry K.Singla, Advocate for respondent No.1.

Mr. Vikas Chatrath, Advocate and
Mr. Nitin Kaushal, Advocate for respondents No.2 to 4.

TRIBHUVAN DAHIYA, J.

This is defendant's second appeal against the concurrent findings of both the Courts below.

2. The facts of the case in brief are, respondent No.1/plaintiff (hereinafter referred to as the 'plaintiff') filed a suit for mandatory injunction seeking direction to the appellant/defendant (hereinafter referred to as the 'defendant') to remove electric motor connection No.KB/266 AP/OYT, installed in *khasra* No.826/2 (4-0), owned and possessed by the plaintiff as per *jamabandi* for the year 2007-08 situated in Village Kasba Bharal Tehsil Malerkotla District Sangrur. The mandate was sought on the pleading that originally Gurbachan Singh and Puran Singh, sons of Diwan Singh were owners in possession of land measuring 4 *kanal* bearing *khewat/khatoni* No.123/222 in *khasra* No.826/2 (4-0). On 12.06.1979, the plaintiff

purchased above said land, vide sale deed dated 12.06.1979, with specific *khasra* No.826/2 (4-0) and became owner in possession of the same. The defendant was also having adjoining land on the eastern side, but he got the electric motor in question installed in the aforesaid land owned and possessed by the plaintiff, in connivance with other defendants/officials of the Punjab State Power Corporation Limited.

3. The suit was contested by the defendant by pleading that Gurbachan Singh and Puran Singh were owners in possession of 22 *kanal* 19 *marla* including the suit land. The plaintiff never came in possession of the suit land, which was owned and possessed by Charanjeet Kaur, defendant's mother. It was also averred that on 01.08.2005, she purchased land measuring 4 *kanal* 8 *marla* from Puran Singh and legal representatives of Gurbachan Singh out of the total *khewat* of land measuring 22 *kanal* 9 *marla*, which included share in *khasra* No.826/2 (4-0) as well. The electric motor was installed in that *khasra* number since it was in possession of the defendant's mother Charanjeet Kaur.

4. On the pleadings of the parties, the following issues were settled by the trial Court:

1. Whether the plaintiff is entitled to mandatory injunction as prayed for?OPP
2. Whether the plaint is not maintainable in the present form?OPD
3. Whether the plaintiff has no cause of action to file the present suit?OPD
4. Whether the plaintiff has concealed the material facts from the Court?OPD
5. Relief.

5. While deciding Issue No.1, the trial Court recorded that in order to substantiate his ownership and possession over the suit land, the plaintiff has produced the sale deed No.818 dated 12.06.1979 (Ex.P2), which shows the purchase of specific *khewat khatoni* No.195/182/304 bearing *hasra* No.826/2 (4-0). Reliance has further been placed on other documents, like *jamabandi* for the year 2007-08, which shows that the suit land was sold to plaintiff by Gurbachan Singh and Puran Singh. In *hasra girdawari*, Ex.P8, also plaintiff is shown to be in possession of the suit land. A reference has also been made to written statement filed by the officials/defendants No.2 to 4 to the effect that the defendant applied for installation of the disputed electric motor connection in *khewat/khatoni* No.197/326 *hasra* No.801 (8-0) and 802 (4-0), which is not the suit land where the electric motor, in fact, has been installed. PW-3 Parmjeet Kaur, Clerk in PSEB has also deposed that the application for installation of electric motor was with respect to *hasra* No.801 (8-0) and 802 (4-0). Therefore, as per evidence on record, the defendant did not even apply for installation of the electric motor in the suit land belonging to the plaintiff. The plaintiff himself in his testimony as PW-2 admitted that at the time of the installation of the electric motor, no revenue officer was present at the spot. Besides, the defendant's mother Charanjeet Kaur, who is claimed to be in possession of the suit land, has not come into the witness box to prove her version. In the light of this evidence, the trial Court held that the defendant failed to prove that his mother was in possession of the suit land, where admittedly the electric motor connection had been installed. On the contrary, the plaintiff's possession over the suit land specifically *hasra* No.826/2 (4-0) stands established on the basis of documentary as well as oral evidence, as

mentioned above. Accordingly, the issue was decided in plaintiff's favour holding him entitled to the mandatory injunction sought.

6. In view of the findings on Issue No.1, Issues No.2, 3 and 4 were also decided against the defendant and in favour of the plaintiff. The suit was decreed with costs vide judgment and decree dated 12.12.2013. These findings were affirmed by the lower appellate Court in appeal, vide judgment and decree dated 15.01.2016.

7. Learned counsel for the appellant/defendant contends that partition of the suit land has not taken place and both the parties are co-sharers in possession thereof. A co-sharer is taken to be in possession of every inch of land. Resultantly, mandatory injunction cannot be issued against the defendant, who is a co-sharer in the suit land. It was further contended that the only remedy with the plaintiff was to file a suit for partition. In support of his contentions, he has relied upon Full Bench judgments of this Court in *Ram Chander versus Bhim Singh and others* 2008(3) R.C.R.(Civil) 685.

8. *Per contra*, learned counsel for the plaintiff/respondent has supported the impugned judgments, which according to him have been rightly decided as the plaintiff has been able to prove his possession and ownership over the land in question.

9. Learned counsel for the parties have been heard and record perused.

10. The findings of the Courts below, based upon documentary as well as oral evidence on record, are that the plaintiff purchased specific *khasra No./suit land*, vide sale deed dated 12.06.1979 (Ex.P2), in the joint *khewat*. His possession and ownership of the same is recorded in the revenue

record duly proved before the Court. Although the land belonging to the parties has not been partitioned by metes and bounds, there is no denying the fact that the plaintiff remains in possession of specific *khasra* no./suit land which has been purchased by him vide sale deed dated 12.06.1979 (Ex.P2). Not only that, the sale deed (Ex.D2), on the basis of which defendant became co-sharer in the joint property, does not mention the suit land. Both, the plaintiff as well as the defendant, being co-owners, are in possession of separate parcels of land, which is established by the evidence on record. It is not a case where the plaintiff has sought an injunction seeking ouster of the defendant from the suit land or any specific portion/share thereof on which he has been put in possession by his vendor. Instead, the mandatory injunction has been sought and issued only to remedy the situation which has arisen on account of installation of electric motor in specific portion of land on which the plaintiff's possession and ownership stand established, as concurrently recorded by both the Courts below. Therefore, the injunction has rightly been issued.

11. The Full Bench judgment of this Court in *Ram Chander* case (*supra*) would not help the defendant. The judgment holds that co-sharers in exclusive possession of the joint land and his vendee, are entitled to continue in possession and protect the same to the extent of their share till the joint holding is partitioned, without asserting exclusive ownership to the portion so transferred and possessed. In the instant case also, the plaintiff is only seeking to protect possession over the suit land specifically transferred to him pursuant to the sale deed dated 12.06.1979 (Ex.P2). It was the defendant who transgressed into the area/parcel which was in exclusive possession of the plaintiff, by installing the electric motor in question. Removal of such

electric motor would not in any manner amount to ouster of the co-owner/defendant.

12. In view of the aforesaid discussion, plaintiff is entitled to seek mandatory injunction for removal of the electric motor in question installed in the suit land specifically owned and possessed by him. There is no error of law in the judgments of the Courts below in issuing/affirming the mandatory injunction sought for by decreeing the plaintiff's suit. No substantial question of law arises for consideration either.

13. Appeal stands dismissed.

14. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

24.01.2023
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes