

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

120

RSA-2557-2019(O&M)
Date of Decision: 14.09.2023

Kulwinder Singh

....Appellant

Versus

Paramjit Singh

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Munish Khangwal, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

CM-6966-C-2019

Present application has been filed under Section 151 C.P.C. seeking condonation of delay of 08 days in re-filing the present appeal.

For the reasons enumerated in the application, the same is allowed and the delay of 08 days in re-filing the present appeal is hereby condoned.

Application stands disposed of.

RSA-2557-2019(O&M)

1. Present regular second appeal has been filed by the appellant/plaintiff-Kulwinder Singh, against the concurrent findings of dismissal of civil suit.

2. By way of civil suit, plaintiff/appellant-Kulwinder Singh

sought a decree of permanent injunction claiming himself to be the owner in possession of the suit property as the same is his ancestral property and is being used for storing agricultural implements for preparing dung cakes and other odd articles. On being interfered by the defendant and getting apprehension of threat to the possession over the suit property, plaintiff prayed for a decree of injunction.

3. In the written statement filed by the defendant-Paramjit Singh apart from the formal objections, a categorical stand has been taken that plaintiff is neither owner; nor in possession of the suit property, rather the same is surrounded by the property of the defendant, even the passage existing nearby is the private passage of the defendant and suit property is part and parcel of the house, which infact is an open space. It is also pleaded that the house and property of the plaintiff is situated at a far place away from the property in dispute.

4. In the replication filed by the plaintiff, surprisingly an U-turn was taken by pleading that suit property falls within *Lal Lakir* in the village and is just on the borderline of *Lal Lakir* and bears Khasra number. It is also pleaded that as a matter of fact, suit property is being used by the plaintiff as well as by some other neighborhood inhabitants also. Thus, on the basis of its regular use since the time of his ancestors, plaintiff pleaded that he be treated as owner of the suit property. It is further pleaded that after filing of the civil suit by the plaintiff, defendant committed mischief and on the night of

15.03.2014, he started raising boundary wall around the suit property with a view to encroach upon the same. The matter was reported to the police and a compromise was effected between the parties in the presence of *Khangri Panchayat*, where defendant accepted to demolish the construction raised by him. Plaintiff requested the Halqa Patwari for conducting demarcation, but, he expressed his inability to demarcate the suit property, because, it falls within the *Lal Lakir* of the Village.

5. Considering the pleadings of the parties, learned trial Court framed following seven issues on 29.09.2014:

- 1. Whether the applicant/plaintiff is owner in possession of the suit property? OPP*
- 2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP*
- 3. Whether the present suit is not maintainable? OPD*
- 4. Whether the plaintiff has no locus standi to file the suit? OPD*
- 5. Whether the plaintiff has not come to the court with clean hands? OPD*
- 6. Whether the plaintiff has suppressed the material facts from filing the present suit? OPD*
- 7. Relief.'*

6. At the first instance, learned Trial Court considered the issue of question of maintainability of the suit, which is covered under Issue No.3. Learned Trial Court found that neither there is any evidence in regard to the ownership of the land in question from the time of the ancestors in favour of the plaintiff; nor there is any evidence of his possession. Learned Trial Court also noticed the confused and contradictory pleadings has been raised by the plaintiff in his plaint as well as in the replication.

On the one hand, it was pleaded that the property is on the border of the *Lal Lakir* as well as some part of the same bears Khasra number and on the other hand, stand taken is that the Patwari Halqa refused to conduct the demarcation under the pretext that the same is within *Lal Lakir*. Thus, learned Trial Court held that even as per the pleadings of the plaintiff, location of the suit property is not clear. For the purpose of considering the prayer of permanent injunction, reliance has been placed upon *Anathula Sudhakar Vs. P.Buchi Reddy, 2008 (2) RCR (Civil) 879* and being guided with the principles of said judgment, learned trial Court held that suit of the plaintiff is not maintainable.

7. For the sake of convenience, findings recorded in paragraph Nos.11, 12, 13 and 14 by learned trial Court are reproduced hereunder:

'11. Meaning thereby, the instant suit can only be adjudicated when the ownership of the suit property would be decided by this court. However, relief of declaration qua the ownership of the suit property has not been claimed in the instant suit. This court would like to refer to the judgment of Hon'ble Apex Court in the case titled as "Anathula Sudhakar Versus P.Buchi Reddy, 2008 (2) RCR (Civil) 879", wherein it was held:

"in an injunction suit, there can be three contingencies in which the suit is maintainable viz(1) When plaintiff is in lawful or peaceful possession of property and such possession is interfered or threatened then suit for injunction simpliciter is maintainable but a person in wrongful possession is not entitled to an injunction against the rightful owner: (2) A person out of possession, cannot seek the relief of injunction simpliciter, without

*claiming the relief of possession;
(3) Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction"*

12. *In the instant suit, the ownership of the suit property is in dispute and the plaintiff is claiming his deemed ownership over the same as he along with his neighborers is using the same for preparing storing cow dungs/dhers. In "Dhoom Singh Vs. Baisakhi Ram 1997 (1) R.C.R(Civil) 147", the Hon'ble Punjab and Haryana High Court held that merely because cattle are tethered and pegs installed in a property, the same would not amount to proof of possession of a person over the same. Mere use by a person of a plot cannot be equated with possession. A user of a plot has to prove by his overt acts access into a property and that the disputed site was his possessory title and that he wanted to exclude everybody from the user of such plot to his advantage. In the present case, the only basis for claiming possession over the same by the plaintiff was storing cow dung cakes, which was not sufficient to prove his possession. Moreover, other villagers were also not excluded as it was admitted by the plaintiff himself that they were also using the suit property for the same purpose. Thus, in view of the law laid down by the Hon'ble Punjab and Haryana High Court, it can safely be held that the plaintiff is not in possession of the suit property.*

13. *Further, the plaintiff has come up with confused pleadings qua the location of the suit property. In the replication filed by him, he has pleaded that the suit property is situated on the borderline of the Lal Lakir and bears Khasra number while at the same time he has pleaded that the revenue officials denied to conduct the demarcation of the spot as the suit property falls in Lal Lakir of the Village. This fact is also going against the case of the plaintiff. Moreover, the plaintiff has himself pleaded in the replication that the defendant raised boundary wall over the suit property twice which nonetheless is a cloud over his possession over the suit property.*

14. *The documentary evidence placed on file i.e. site plans and photographs etc. are not sufficient to hold that the plaintiff is in possession over the suit property. To utter surprise of this court PW2 Shaunki Ram during*

his cross examination has deposed that the Village Panchayat is owner of the suit property while the plaintiff and defendant- are not owner of the same. PW3 Kamaljeet Singh did not turn up for his cross examination, therefore, his oral testimony is of no use. Further, PW4 Gurmail Singh during his cross examination has admitted the photographs and documents placed on record by the defendant and even he was unable to depose material aspects regarding the possession of the plaintiff over the suit property. Meaning thereby, even through the oral testimony placed on record by the plaintiff, he is not able to prove his possession over the suit property.'

8. It won't be out of place to observe here that learned Trial Court has already noticed the contradictory statements of the witnesses produced by the plaintiff himself. Even, as per the statement of Shaunki Ram (PW2), there is an admission during cross examination that Village Panchayat is owner of the suit property. Another witness, namely, Kamaljeet Singh-PW3 did not turn up for his cross-examination.

9. Before the First Appellate Court, all the issues framed the by learned trial Court referred hereinabove were discussed and the learned First Appellate Court in paragraph No.10 and paragraph No.11 recorded its reasoning that Plaintiff Kulwinder Singh has failed in establishing his possession over the suit property. Rather, learned Appellate Court has held that a false plea has been taken by him by saying that the property in question is ancestral one.

Finding recorded by learned First Appellate Court in paragraph No. 11 says as under:

'11. Thus when the evidence is appreciated thoroughly, it can be safely presumed that appellant Kulwinder Singh is not in established possession of

the suit property and false pleas were taken by the appellant that property in dispute is his ancestral property, whereas, in the replication, the appellant himself had conceded the fact that he along with the other inhabitants of the village had been storing their cow dung/dher in the suit property and the suit property is meant for other allied purposes, but as discussed above, the appellant has failed to prove his case and as such, this Court feels that the Ld. Lower Court had rightly appreciated the evidence in a correct perspective manner and rightly dismissed the suit of the present appellant.'

10. Thus, after hearing the arguments addressed by learned counsel for the appellant before this Court and examining the reasons given by the Courts below, this Court is also convinced that plaintiff has completely failed in establishing his ownership as well as possession over the property in question, rather his conduct reflects that an unsuccessful attempt was made by him to grab the property without any right in the same.

No question of law, much less any substantial question of law arises for consideration in the present appeal.

Therefore, the impugned judgment and decree passed by both the Courts below are maintained and the present appeal stands dismissed.

11. As the appeal has been dealt with on merits, there is no need to pass any separate order in the pending applications, thus, same also stands disposed of.

September 14,2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no