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2023:PHHC:075449

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

RSA-428-2019 (O&M)

Date of decision: 15.05.2023

Annu Uppal

...Appellant

VS

Manohar Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate,
For the appellant.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals
before learned trial Court.

2. Having suffered concurrent adverse findings by the two
Courts below, defendant is in second appeal before this Court assailing
learned trial Court judgment and decree dated 13.04.2015, as upheld by
learned First Appellate Court vide its judgment and decree dated
17.09.2018, partly decreeing the suit of plaintiff to the effect that he
being in actual possession over 1 Kanal 2 Marlas land in Lilla No.34/20/1,
was entitled to protect his possession. Defendant/appellant herein was
also restrained from dispossessing him except in due course of law. It
was further observed that sale deed of defendant was valid and counter
claim of defendant was decreed to the effect that *rapat roznamcha* dated
15.03.1998 did not confer exclusive possessory rights to plaintiff in suit
property i.e. Killa No.34/20/1 and his possession was held subject to
partition.

3. Briefly stated, facts as noticed by Courts below are as under:

“It is the specific case of the plaintiff that he is owner in possession of the suit property agricultural land measuring 2 kanal 6 marla comprised in killa No34//20/1 min. (2-6) under registered sale-deed No. 348 dated 08.09.2000 and sale-deed No2740 dated 13.03.2001As per the averments in the plaintthe plaintiff purchased 2 kanal 6 marla land in killa No34//20/1 and constructed his residential house. The plaintiff came in possession of the suit property in the year 1997-98 when the girdawari of the suit property was transferred in his name from co-sharer Gurdayal Singh vide rapat rojnamacha vakayati dated 15.03.1998As such said Sh. Gurdayal Singh was left with no share in the suit property and the plaintiff became its exclusive owner in possession. Plaintiff alleges that the defendant Annu Uppal is interfering in his peaceful possession over the suit property and asserts her right therein on the basis of a sale-deed No. 2155 dated 18.07.2011 stated to have been executed by Harvinder Singh and Arvinder Singh, both sons of Gurdayal Singh. It is pleaded by the plaintiff that after the girdawri of the suit property was transferred in his name from Gurdayal Singhthen he or his legal heirs were left with no right, title or interest in the suit land, thereforesons of Gurdayal Singh could not sale killa No. 34/20/1 (1-13) to defendant Annu Uppal. Resultantly, the plaintiff claims the defendant has no right, title or interest in the suit property owned and possessed by him.

3. By way of the present suit, the plaintiff has assailed the registered sale-deed No2155 dated 18.07.2011 executed by sons of Gurdayal Singh in favor of the defendant stating that the sale-deed is a nullity. Besides, the plaintiff has also prayed for permanent prohibitory injunction against the defendant restraining her from interfering in his possession.”

4. Upon notice, defendant appeared and filed written statement taking preliminary objections on the grounds of maintainability, locus standi, concealment of facts, cause of action etc.

4.1 On merits, it was submitted that suit property was not agricultural in nature but part of residential area under Society Garden Colony and plaintiff intentionally did not disclose the complete particulars of the suit property including dimensions and boundaries thereof. All other averments were also denied.

4.2. Further, defendant filed a counter claim assailing the *rapat roznamcha vakayati* dated 15.03.1998 on the basis of which plaintiff was asserting his possessory rights in the property in dispute. It was alleged that plaintiff obtained the impugned *rapat roznamcha* in collusion with *Halqa* Patwari and one Hakim Rai, Lambardar because the affected parties Gurdayal Singh or his legal heirs were not given any notice before changing the Khasra Girdawari entries. Hence, the entire exercise was invalid.

5. Neither replication was filed to the written statement nor any rejoinder to the counter-claim. Based on rival pleadings, following issues were framed:

- “a. Whether the plaintiff is entitled to the declaration to the effect that the sale deed No.2155 dated 18.07.2011 is illegal, null and void? OPP*
- b. Whether the plaintiff is in possession of the suit? OPP*
- c. Whether the plaintiff is entitled to permanent injunction restraining the defendant from dispossessing the plaintiff from the suit land forcibly and illegally?OPP*
- d. Whether the defendant is entitled to declaration to the effect that the entries of roznamcha wakayati No234 dated 15.03.1998 are illegal, null and void and that the revenue entries regarding possession of the plaintiff over the suit land are illegal, null and void?OPP*
- e. Whether the suit filed by the plaintiff is not maintainable in its present form?OPD*
- f. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD*
- g. What relief? ”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No. (a) and (d) were decided against plaintiff and in favour of defendant. Issues

No. (b) and (c) were decided in favour of plaintiff and against defendant, who was held at liberty to seek possession of her share by way of partition, as per law. Issues No. (e) and (f) were not pressed by defendant. Consequently, suit of plaintiff and counter claim of defendant were decreed by learned trial Court vide impugned judgment and decree dated 13.04.2015 in the manner, specified in para 1 above.

8. Feeling aggrieved, defendant went in appeal, which was also dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by defendant before this Court.

9. Learned counsel appearing on behalf of appellant/defendant would canvass that plaintiff was required to prove proper identity of suit land by producing site plan, *Aks Sijra* etc., but he failed to even plead the length and breadth of suit property. Learned Courts below wrongly granted the relief of injunction only on the basis of report of Local Commission by stating that the report of Local Commission is a legal evidence, whereas the same cannot be taken into consideration in the absence of any objection thereto.

10. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

11. Heard.

12. In its judgment, learned First Appellate Court, *inter alia*, observed as below:

“16. *It is an admitted fact that the plaintiff as well as defendant had purchased the part of the suit property from a*

joint khewat which has not been partitioned by metes and bounds. It is well settled principle of law that a co-sharer in exclusive can protect his possession from being interfered by another co-sharer till the joint property is partitioned.

17. *Neither the plaintiff nor the defendant has placed on record the record showing the area of Killa no 34/20/1. However, from a perusal of copy of Jamabandi for the year 2009-10, it is clear that Killa No.34/20 has been sub divided in Killa No.34/20/1 and 34/20/2. A perusal of this Jamabandi further reveals that in khewat No.993 and Khatoni No.1146 the killa No.34/20/1 to the extent of 1K-13M is in possession of Harvinder and Arvinder Singh etc. This Jamabandi further reveals that in Khatoni No.1174/75 Killa No.34/20/1 min. to the extent of 2K-6M is in possession of Manohar Lal. However, this revenue entry has been reflected in the Jamabandi on the basis of DDR No.234 dated 15.03.1998 which the learned civil Judge (Jr. Division) has held that this DDR has been prepared without any basis and no appeal has been preferred by plaintiff after being aggrieved from this finding. So, no much reliance can be placed on this revenue record.*

18. *It is pertinent to mention here that the then learned Civil Judge, (Jr. Division), Ganaur has appointed Halka Girdwar, Ganaur to position visit the spot and give his report about existing portion after demarcation 4 Killa No.34/20/1. A perusal of Local Commission report (Ex. P9) reveals that the plaintiff Manohar Lal has constructed boundary wall around the land measuring 1K-2M in killa No.34/20/1. It is well settled principle of law that such a local Commission report can be taken into consideration without examining the Local Commission unless the report has been objected to by other party. No objection has been raised by the appellant regarding the Local commission report.*

19. *In the case titled as **Molu Ram Vs. Baje Singh & ors. 1991 PLJ 543**, it has been held by the Hon'ble Punjab and Haryana High Court that Local Commissioner reported certain constructions as Khors, Khunta, Gandasa (Chaff Cutter), etc. and also cattle tethered there stated to belong to plaintiff. Therefore, in a nutshell all that was reported by Local Commissioner about the factual existing position at the spot. The revenue entries show plots owned by Gram Panchayat and was even in its possession as found to exist on the latest factual position as found to exist on the spot by the Local Commissioner, this evidence cannot possibly have precedence over the same. In the instant case also Local Commission report ExP9 shows that the possession of plaintiff over the land measuring 1K-2M. Meaning thereby Local Commissioner report was considered to see possession and rebut the revenue entries. Moreover, a perusal of para no.3 of the written statement filed by the defendant reveals*

that the defendant has admitted that the plaintiff has raised construction over the suit property. Meaning thereby on the day of filing of the suit the plaintiff was in possession over the land measuring 1K-2M as reported by the Local Commissioner. If it is the position then the plaintiff being a co-sharer in exclusive possession can protect his possession from being interfered till the joint property is partitioned. The learned counsel for the appellant has relied upon the case titled as Darshan Singh Vs. Santokh Singh & Ors., Bondar Singh and Ors. Vs Nihal Singh Union of India & Ors. Vs. Vasavi Co-op. Housing Society Ltd and ors. and Gram Panchayat Mundliyan Vs Bawria & Ors (Supra). There is no dispute regarding preposition of law held in these cases however with due deference to these case laws, these case laws are of no help to the appellant as the same have been given in different set of facts.

20. *In view of the aforesaid discussion, the plaintiff has proved his exclusive possession over the land measuring 1K-2M out of the suit property and he is entitled to protect his possession by seeking a decree for injunction and this fact has rightly observed by the then learned Civil Judge (Jr. Division), Gannaur while passing the impugned judgment and decree. So, question no.2 posed before this Court stands answered accordingly.*

21. *No other point has been urged before this court.*

22. *In view of the above-said discussion, the learned Civil Judge (Junior Division) Gannaur has rightly appreciated the facts and evidence placed on record. Since, there is no illegality or infirmity while appreciating the facts and law, this court finds that no interference is required in the impugned judgment and decree. Finding no merits in the instant appeal, the same is hereby dismissed with costs."*

13. Appellant/defendant had not objected to report of Local Commission either by way of filing of specific objection petition or even otherwise by filing an application to summon him for cross-examination. Neither the needful was done before learned Trial Court nor even before learned First Appellate Court. It is only for the first time, a stand is being taken before this Court in second appeal that learned Courts below committed manifest error in not summoning the Local Commissioner. It is not for this Court at this stage to summon the local commissioner on its own volition. Since trite law it is that Commissions are appointed by the

Court for its assistance only. I find no substance in the arguments of learned counsel for the appellant.

14. Further learned counsel argues that since no reply has been filed to the counter claim, therefore, averments contained therein are deemed to be admitted. I find that the said argument is completely not sustainable since no new facts have been pleaded in the counter-claim and the same having been thoroughly dealt with by learned Court below from the averments contained in the written statement coupled with the evidence adduced.

15. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

15.1. No new arguments have been raised other than reiteration of the stand taken before learned Courts below.

16. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

17. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

18. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.
19. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
20. Pending application/s, if any, shall also stand disposed of.
21. No order as to costs.

(ARUN MONGA)
JUDGE

15.05.2023
Vandana

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