



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

RSA-3519-2019 (O&M)

Date of Decision: July 22, 2024

Vipan Kumar

... Appellant

Versus

Mangat Ram @ Manga and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Bhriugu Dutt Sharma, Advocate for the appellant.

DEEPAK GUPTA, J.(Oral)

Suit for seeking a decree for permanent injunction regarding the property in dispute filed by the plaintiff was dismissed by the Trial Court on 07.04.2017. The appeal filed by him was dismissed by the First Appellate Court on 25.10.2018. The plaintiff-appellant has approached this Court against this concurrent findings.

2. Learned counsel for the appellant contends that earlier some compromise had taken place, but his client had not approached him so as to inform him about the latest status of the case. Learned counsel contends that the findings have been returned by the Court below without appreciating the evidence.

After considering the submissions of learned counsel for the appellant and having appraised the paper book, this Court does not find any merit in this appeal. The whole controversy, the issue involved in the matter, the evidence produced in support thereof and the findings thereon, is crystallized by First Appellate Court in para Nos.15, 16 and 17 of the judgment, which are as under:-

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“15. Admittedly, the suit property is Shamlat property, situated in abadi/lal lakir of village Khiwa. The matter in controversy between the parties is that plaintiff has alleged that he is in actual and physical possession of the suit property for the last more than 40 years whereas defendants have alleged that they are in possession of the suit property since last 16 years. Plaintiff in order to prove his case has led both oral as well as the documentary evidence. Plaintiff himself has stepped into the witness box as PW1. He has produced on record the site plan of the suit property ExP1 and photographs. So far the site plan of the suit property is concerned, plaintiff has examined Sanjeev Kumar as PW5. He has deposed that the site plan ExP1 was prepared by him at the instance of plaintiff Vipin Kumar. He in his cross-examination has stated that he has not prepared the site plan ExP1 at the spot and admitted that he has not mentioned the length and width of the land. He has also stated that he cannot say as to whether plaintiff is in possession of that land or not. Plaintiff Vipin Kumar in his cross-examination has admitted that the Draftsman had not visited the spot and he prepared the site plan at his instance. He admitted that the length and width of the land, the installation of a gate, tap, trees and the place where the cattle used to be tied have not been shown. He has stated that he did not know that Som Parkash defendant filed a complaint dated 03.02.2011 against him to the Chowki Incharge Uggi but voluntarily stated that they brought the police. He admitted that when the defendants brought the police, he filed this suit. Plaintiff has also produced one document Mark ‘K’ and stated that the said document is with regard to a tap and admitted that the said document neither bears any seal and signature nor any date, month or year. PW2 Pritam Dass and PW3 Faqir Chand have stated that Vipin Kumar is in possession of the suit property. PW2 Pritam Dass in his crossexamination has stated that he did not know against whom Vipin Kumar has filed this suit. He admitted that there is no surrounding wall and then voluntarily stated that there is a barbed wire. PW3 Faqir Chand in his cross-examination has stated that neither he is a Numberdar nor member of Panchayat or Sarpanch of village Khiwa. Photograph ExP2 was shown to him and he stated that he cannot tell that the said photograph belongs to which place. He admitted that there is no surrounding wall of disputed

place. PW4 Raj Kumar has deposed that he collects the water bills from the village and then handover the same to the panchayat. One tap has been installed in the land in dispute and he has proved the copies of the bill issued in the name of Vipin Kumar as ExP4 to ExP14. He in his cross-examination has also stated that on the receipt ExP1 to ExP13 the place where the tap has been installed has not been mentioned. He has admitted that a tap has also been installed in the house of Vipin Kumar. So far the witness PW6 Yogesh Kumar is concerned, he has not turned up for his cross-examination, so his examination in chief carries no value and cannot be read into evidence.

16. On the other hand, defendants in order to prove their possession over the suit land has examined defendant Som Parkash as DW1 who has brought on record the site plan of the suit property ExD1, photographs of the suit property ExD2, ExD3 and ExD5, certificate produced by the Panchayat ExD4. He in his cross-examination has stated that the tap has been installed outside the disputed land and it was got installed by the Panchayat. DW2 Pawan Kumar has reiterated the averments as made by DW1 Som Parkash and has stated that defendants are using the suit property for tying their cattle and ruri is also lying in the suit property. The Lrs of defendant no. 1 and 3 are using the suit property for the last more than 21 years. He in his cross-examination has stated that his house is adjoining to the suit land and also stated that site plan ExP1 is not of the disputed land. Further, he has stated that ruri, one wooden khurli and chaff are lying in the disputed place. He admitted that there are 10 trees in the disputed place. DW3 Wilson Masih has proved the site plan ExD1 prepared by him.

17. From the above referred oral evidence adduced by the plaintiff, the possession of the plaintiff over the suit land has not been proved. So far the documentary evidence produced by the plaintiff is concerned, the photographs produced by him are not proved as per law and it is also not proved that these photographs are of the suit land. Further plaintiff has relied upon the receipts of the water bills and from the said receipts it cannot be inferred that these receipts are of bill of the tap alleged to be installed in the suit land. PW5 Sanjeev Soni in his cross-examination has stated that a tap has also been installed in the house of plaintiff Vipin

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Kumar. Thus, from the receipts Ex.P4 to Ex.P13 it can not be established that these receipts are of the bills of tap installed in the house of Vipin Kumar or/are of the tap installed in the suit property. Plaintiff has failed to lead any cogent and convincing evidence to prove his case. The learned lower court after appreciating the evidence produced on record has rightly dismissed the suit of the plaintiff. I find no force in the submissions of the learned counsel for the appellant. No interference is called for by this court in the present appeal. I do not find any merit in the appeal, so the same is dismissed with costs. Decree sheet be prepared accordingly. The record of learned trial court be send back and appeal file be consigned to the Record Room.”

3. It is thus clear that dispute pertained to the possession of a property situated in Abaadi/ Lal Dora of the village. Both the parties were claiming their respective possession. The oral evidence produced by the plaintiff was found to be untrustworthy. The site plan Ex.P1 relied by the plaintiff was found to have been prepared by the Draftsman- PW5 without visiting the spot and only as the asking of the plaintiff. It was also found that water bill relied by the plaintiff could not be proved to be of the property in dispute as it was admitted by the plaintiff that he also had a tap in his house and that he did not produce any evidence to the bill pertained to the house for the suit property. It has also been found by the Courts below that the defendant not only examined the trustworthy oral evidence but also proved on record the site plan, and the photographs and the certificates produced by the Panchayat.

4. In a suit for permanent injunction based on possession, it is for the plaintiff to prove his possession to be successful for grant of injunction. However, plaintiff failed to do so.

5. In the face of afore-said facts and circumstances, this Court does not find any merit in the present appeal. After going through the judgments of the Courts below, it is found that the concurrent findings of facts returned by the trial Court are well-reasoned and based upon proper appreciation of evidence, with no illegality or ambiguity therein. As such, there is no reason to interfere therein. No substantial question of law is found to be involved.

Dismissed.

July 22, 2024

sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No