

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1268-1993 (O&M)
Reserved on:24.04.2024
Pronounced on: 01.05.2024
2024:PHHC: 059410

RACHHPAL KAUR

.... APPELLANTS

Vs.

STATE OF PUNJAB AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. Ashwani Kumar Chopra, Sr. Advocate, with
Mr. Brahmjot Singh Nahar, Advocate, for the appellant.

Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

This Regular Second Appeal is directed by the plaintiff of the case, whose suit for permanent injunction regarding suit property was decreed by the trial Court, but the appeal of the defendants was accepted, resulting in dismissal of the suit.

2. Trial Court record was called and the same has been perused. In order to avoid confusion, parties shall be referred to as per their status before the Id. Trial Court.

3. Case of the plaintiff (*appellant herein*) is that she is owner of land comprised in Khasra No.33 (0-6) and 34(0-6) of Rectangle No.80, situated at Adda Nadala, Tehsil Kapurthala, by virtue of sale deed dated 20.09.1974 (copy Ex.P1), on which land, she raised construction on a building. Apprehending dispossession from the said property, plaintiff prayed for a decree for permanent injunction against the defendants (*respondents herein*).

4. Defendants, in their written statement, did not dispute either the

ownership of the plaintiff in respect of the suit property or the fact that a building exist thereon as raised by the plaintiff but according to the defendants, plaintiff had encroached upon adjoining Government property comprised in Khasra No.236. It was also the case of the defendants that ejectment order against the husband of the plaintiff had already been passed by the competent authorities and that writ petition filed by the plaintiff's husband was dismissed by this High Court and so, the suit was barred by principle of *res judicata*.

5. Following issues were framed for adjudication: -

- (1) Whether the plaintiff is the owner in possession of the property in dispute? OPP
- (2) Whether the present suit is barred by the principle of *res judicata*? OPD
- (3) Whether the present suit is not maintainable? OPD
- (4) Whether the civil Court has no jurisdiction to try this case? OPD
- (5) Whether notice u/s 80 CPC has not been served upon the defendants? OPD
- (6) Relief.

6. Trial Court disposed of issues No.2 to 5 as not pressed for; whereas, issue No.1 was decided in favour of the plaintiff. Decree for permanent injunction was accordingly directed to be passed by way of judgment dated 31.10.1991.

7. However, in the appeal filed by the defendants, the First Appellate Court vide its judgment dated 14.02.1992 held that plaintiff had failed to prove her title or possession over the suit property, as only the photocopy of the sale deed had been produced and the revenue record was not tendered in evidence. Besides, in Jamabandi available on record, plaintiff was only the co-sharer in khasra No.33 & 34; that plaintiff had not appeared in the

witness-box and that ejectment order of husband of the plaintiff Joginder Singh had already been passed by the Court of Exclusive Jurisdiction, which had been upheld in appeal and the writ petition filed by the Joginder Singh, the husband of the plaintiff was dismissed. As such, the finding on issue No.1 was reversed. The Appellate Court also held that suit was not barred by principle of *res judicata*, though documents Ex.DA to DC pertaining to previous litigation qua the husband of the plaintiff, may be relevant. Consequent to the finding on issue No.1, the suit of the plaintiff was dismissed.

8. Assailing the aforesaid finding of the appellate Court, plaintiff contends that the First Appellate Court, committed grave error by ignoring the well settled legal proposition that admission is the best evidence and that defendants specifically admitted the ownership as well as possession of the plaintiff over the property in dispute. It is further contended that judgment *in personam* qua the husband of the plaintiff, in which plaintiff was not a party, is not binding on her. Not only this, the First Appellate Court ignored the admission made by the witnesses of the defendants to the effect that there was no encroachment on the part of the plaintiff on the Government road. Prayer is made for setting aside the impugned judgment and decree passed by the 1d. First Appellate Court and to restore that of the trial Court and decree the suit.

9. 1d. State counsel for the respondents has opposed the prayer and defended the impugned judgment of the First Appellate Court.

10. I have considered submissions of both the sides and perused the record.

11. It is in para No.1 of the plaint that it was pleaded by the plaintiff that she is owner in possession of a building situated at Adda Nadala, District

Kapurthala, as per details given in this para, comprised in Killa No.33 (0-6) and 34 (0-6) of Rectangle No.80 of Village Nadala by virtue of purchase from one Harnam Singh vide sale deed dated 20.09.1974. The corresponding para of the written statement filed by the defendants would reveal a clear admission on their part to the effect that plaintiff is the owner of the suit land and the building constructed thereon, though they denied the sale deed dated 20.09.1974 for want of knowledge.

12. Here itself, it may be noted that DW1 Kuldip Singh Saini, SDO PWD, Kapurthala, examined on behalf of the defendants, categorically admitted that Punjab State i.e. defendants had no concern with Killa Nos.33 & 34 of Rectangle No.80.

13. Once the defendants had categorically admitted that plaintiff was the owner of the land comprised in Khasra Nos.33 & 34, on which she had raised the construction of a building, there was no question to doubt the title of the plaintiff in this regard simply for the reason that only the copy of the sale deed was produced and not the original sale deed.

14. The only issue involved in the case is as to whether plaintiff has encroached upon any portion of adjacent Khasra No.236 belonging to the defendants, as is alleged by them. Since it is the defendants, who alleged encroachment on the part of the plaintiff/her husband in khasra No.236, which admittedly is situated adjacent to the property of the plaintiff, so onus was upon the defendants to prove the same. Perusal of the record would reveal that defendants utterly failed to discharge this onus or to prove any encroachment on the part of the plaintiff.

15. Perusal of the trial Court record would reveal further that vide an order dated 30.01.1989 by Ld. Trial court, Naib Tehsildar, Halka Bholath

was appointed as Local Commissioner to demarcate the suit property and take its measurement. PW2 Jeet Ram, Naib Tehsildar, Phagwara, proved his report Ex.P2 along with the site plan of the spot as Ex.P3 prepared by him and testified that there was no encroachment on the part of the plaintiff of the road. There is no serious cross-examination to this witness except to the suggestion that he had not visited the spot or that he had prepared a wrong report. These suggestions were denied by the witness.

16. DW1 Kuldip Singh Saini, SDO PWD, Kapurthala, referred to an ejectment order Ex.DA dated 25.11.1985 passed by SDO (Civil), Kapurthala, in a case titled 'State Vs. Joginder Singh', as per which there was an encroachment to the extent of 30' x 5' in Khasra No.236 (7-18) and said Joginder Singh was ordered to be evicted from that encroached portion. Appeals filed by said Joginder and other similarly placed persons were dismissed by Commissioner, Jalandhar Division, Jalandhar vide order dated 09.04.1986 (Ex.DB). Joginder Singh, who is admittedly the husband of the plaintiff, approached this Court by filing suit writ petition No.3945 of 1996, but the same was dismissed on 18.01.1988 (Ex.DC). It is admitted by the defendants that plaintiff Richhpal Kaur was not a party to the litigation, in which orders Ex.DA to DC were passed. It is for this reason that even the First Appellate Court held that though these documents may be relevant, but are not binding on the plaintiff and so, the suit was not barred by the principle of *res judicata*.

17. Be that as it may, as per Ex.DA portion of Khasra No.236 to the extent of 30'x5' had been encroached upon. However, no such stand has been taken by the defendants in the written statement of this case. Except Ex.DA to DC, no evidence whatsoever, has been produced to show encroachment on the

part of the plaintiff and in case there is any encroachment as alleged, then as to which portion of Khasra No.236 has been encroached upon by her. DWI Kuldip Singh Saini, SDO PWD, Kapurthala admitted in his cross-examination that there is no ejectment decree against plaintiff-Rachhpal Kaur. He further stated that he was posted in Kapurthala in 1988 and so, could not say as to whether the building of the plaintiff existed since 1974.

18. Another witness examined by the defendants DW2 Roshan Lal Kanungo, PWD B&R, who proved copy of *aksh shajra* as Ex.DW2/1, admitted that he never conducted any demarcation of the site in dispute. He further stated that shops adjoining to the road are *pucca* construction and he cannot say as to when those were constructed. He is even unable to tell as to when the building was constructed by the plaintiff-Rachhpal Kaur. He pleaded ignorance about existence of a drain adjacent to the house of plaintiff and others. Though, he also states that encroachment is to the extent of 5 or 7 feet in width and 71 feet in length, but is unable to tell about that encroached portion and also stated that he was stating about this encroachment because of his personal knowledge and had not conducted any demarcation. The area of alleged demarcation as stated by him is quite different from the area mentioned in Ex.DA.

19. Not only this, in later part of his cross-examination, DW2 admitted existence of a street drain along with the road existing in the front of *pucca* building of the plaintiff. He further admitted that said drain was constructed by the PWD. He further stated that he did not feel any necessity to get the disputed land demarcated from any other agency, as he himself was the patwari of the department. According to him, he had undertaken demarcation work at the spot in order to find out the encroachment over the

property and had submitted the report to the higher authority, but no such demarcation/encroachment report was submitted in this case.

20. It is evident from the aforesaid evidence that except for the demarcation report Ex.P1, prepared by the Local Commissioner appointed by the Court, there was no other evidence on the file so as to prove the alleged encroachment on the part of the plaintiff. Although demarcation, as per DW2, had been earlier conducted, but no such report was ever filed in this case. Defendants did not take any step for getting the demarcation conducted or to rebut the evidence of PW2 in respect of his demarcation report, as per which there was no encroachment on the part of plaintiff.

21. Consequent of the above discussion, finding on issue No.1 by ld. First Appellate Court cannot be sustained. The said finding is reversed. It is held that ld. trial Court had rightly decided issue No.1 in favour of the plaintiff by holding that she was owner in possession of the property in dispute. It is further held that trial Court had rightly decreed the suit, as defendants failed to prove any encroachment on the part of the plaintiff.

22. Consequently, the present appeal is allowed with costs. The impugned judgment and decree dated 26.03.1993 passed by the First Appellate Court is hereby set aside. The judgment and decree dated 31.10.1991 of the ld. trial Court is hereby restored, whereby suit of the plaintiff – appellant was decreed. Decree sheet be prepared accordingly.

Pending application(s), if any, also stand disposed of.

01.05.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether //reportable?</i>	<i>No</i>