

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-529-1993 (O&M)

Reserved on : 01.02.2024

Date of decision: 14.03.2024

Ram Sarup and others

....Appellants

Versus

Amar Nath (deceased) represented by Mam Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.C.S.Singh, Advocate for the appellants

Mr. Rajender Kumar, Advocate for
respondent no.1 (a) to (d)

ANIL KSHETARPAL, J

1. This is defendant's Regular Second Appeal against the judgment and decree passed by the First Appellate Court, which in turn, has reversed the judgment and decree passed by the trial court.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The plaintiffs (respondents) filed a suit for the grant of decree of permanent injunction claiming that they are owners in possession of the suit property described in the attached site plan since time immemorial and they are using the same for tethering of their cattle and for storage of cow dung cakes and kuraris. The defendants, while contesting the suit, submitted that the property with the boundaries as claimed in the plaint does not exist and the site plan submitted by the plaintiffs is wrong. The defendants produced another site plan. It was

claimed that the defendants are owners in possession and the property is situated in Thola Todar in village Bakhali and defendants are biswedars of Thola Todar and as such owners in possession. Whereas the plaintiffs are neither the biswedars of Thola Todar nor in possession of the same. Replication was filed by the plaintiffs. During the pendency of the suit, on an application given by the plaintiffs, the trial court appointed the Local Commissioner, who after visiting the spot, prepared a layout plan of the disputed property. He also submitted report that when he visited the spot he found some ladies were making cow dung cakes and some other persons were also present at the spot. The plaintiffs in order to prove their case examined PW1 Megh Nath and PW2 Amar Nath besides examining PW3 Sita Ram Draftsman. On the other hand, the defendants examined Suraj Bhan and Banta Ram as DW1 and DW2.

4. The trial court dismissed the plaintiffs' suit after recording a positive finding that the layout plan submitted by the defendants matches with the layout plan produced by the defendants. The court also noted that the plaintiffs have failed to produce any independent witness whereas defendants have examined Banta Ram, who is an independent witness. Thus, the plaintiffs' suit was dismissed. It may be significant to note that the plaintiffs produced a copy of petition filed by Jeet Ram under Section 7 (2) of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter referred to as '1961 Act') against the plaintiffs seeking their eviction, which was summarily dismissed on 31.11.1991. Both these documents were marked as 'D' and 'F'. The plaintiffs did

not prove the same. Hence, these documents were not admitted in evidence.

5. The First Appellate Court reversed the judgment and decree passed by the trial court on the following grounds:-

i) the testimony of the defendants that they are owners in possession since the time of their forefathers is beyond pleadings

ii) no house has been constructed in the plot in question.

iii) Local commissioner's report has not been tendered in evidence.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned copy of the requisitioned lower court record.

7. On the one hand, the learned counsel representing the appellants submits that the judgment of the First Appellate Court suffers from multiple errors. He submits that in para 2 of the written statement, the defendants have specifically pleaded that they are owners in possession of the property as the suit property is situated in Thola Todar of village Bakhali and they are the biswedars of the Thola Todar whereas the plaintiffs are not. He further contends that the report of the Local Commissioner is not required to be tendered in evidence as it was part of the record.

8. On the other hand, the learned counsel representing the respondents has submitted that the plaintiffs' possession is proved from the report of the Local Commissioner and the order of the Assistant Collector.

9. The learned counsel representing the parties have also filed their written note of submissions.

10. This Court has analyzed the arguments while evaluating the trial court record. Before a decree for permanent injunction is passed, the court is required to examine the following questions:-

i) whether the party seeking injunction has any right, title or interest in the same.

ii) whether the possession of the party seeking injunction is legal or illegal or unauthorized.

iii) the quality of evidence.

11. It will not be appropriate to grant the decree for permanent injunction just without establishing that the party seeking possession has some right, title or interest in the property. Their possession should have some legal basis.

12. If we analyse the reasons given by the First Appellate Court, it becomes evident that the First Appellate Court has erred in accepting the appeal. The defendants, while filing the written statement, specially in para 2 of the plaint, have specifically pleaded that they are owners in possession of the suit land, which is situated in Thoda Todar of village Bhakhali and they are the biswedars of the Thola Todar whereas the plaintiffs have no connection with the same. Hence, it was not appropriate for the First Appellate Court that the defendants have not pleaded that they are owners in possession.

13. The First Appellate Court has also erred in observing that no house is constructed in the plot and therefore, the defendants have

failed to prove their case. It may be noted here that the defendants are also not claiming that any building has been constructed upon the plot in question. They are only claiming to be owners in possession of the property.

13. Similarly, the First Appellate Court has erred in recording that the Local Commissioner's report has not been tendered in evidence. The Local Commissioner nominated by the court is an officer of the Court. Once he submits the report, the same becomes the part of the record. That is required to be formally proved by examining the Local Commissioner. Any party having objection to the report can summon the Local Commissioner and cross-examine. However, the report of the Local Commissioner, being part of the evidence, is not required to be formally tendered in evidence.

14. It may be noted here that the learned counsel representing the plaintiff has relied upon the order passed by the Assistant Collector on 31.01.1991. The aforesaid order has neither been proved nor exhibited. In any case, this Court has examined the aforesaid order which is a short order consisting of one para dismissing Jeet Ram's petition under Section 7 of the '1961 Act'.

15. Moreover, as already noticed, the plaintiffs are claiming decree for permanent injunction restraining the defendants from interfering in their possession. Their case is to be effect that they are using the suit land for tethering of cattle and storage of cow dung. Tethering of cattle and storage of cow dung is not sufficient to prove the exclusive possession, particularly, when in the villages wherever there is

an open plot or land available, the villagers do tie their cattle and store their cow dung cakes. Moreover, when Megh Nath PW1 appeared in evidence he admitted that the site plan submitted by the defendants is correct. He has never purchased the suit property. Similarly PW2 Amar Nath has stated that approximately 9/10 persons tie their cattle. Such possession of the property does not amount to ouster of the owners, who has some right, title or interest in the same.

16. It may be noted here that the plaintiffs came to the Court for the grant of decree of permanent injunction. The heavy burden is laid upon them to prove their case. They failed to prove any right, title or interest in the property. The trial court, on appreciation of evidence, dismissed the suit. Layout plan produced by the plaintiff did not match with the layout plan prepared by the Local Commissioner. Hence, they did not come to the court with clean hands. Plaintiff-Megh Raj admitted that he has not purchased the property. In these circumstances, it was not appropriate for the First Appellate Court to reverse the judgment and decree passed by the trial court.

17. Keeping in view the aforesaid facts and discussion, the appeal is allowed. The judgment and decree passed by the First Appellate Court is set aside and that of the trial court is restored.

18. All the pending miscellaneous applications, if any, are also disposed of.

14.03.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE