

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-975-1993 (O&M)
Reserved on:24.04.2024
Pronounced on: 02.05.2024
2024:PHHC: 060750

JANAK DULARI AND OTHERS

.... APPELLANTS

Vs.

PURAN CHAND AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. Jai Vir Yadav, Sr. Advocate, with
Ms. Sunita Shekhawat, Advocate, for the appellants.

Mr. H.S. Batth, Advocate, for respondent No.1.

DEEPAK GUPTA, J.

This Regular Second Appeal, by the defendant of the case, is directed against the concurrent findings of the Courts below, whereby suit of the plaintiff for possession of the suit property was decreed, and appeal filed by the defendant was dismissed.

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.

3.1 According to the plaintiff Puran Chand (*now respondent No.1 through his LRs*), he is owner of a plot measuring 198 sq. yards, situated in Khewat No.737, Khatauni No.1011 Khasra No.2723/2010/497 situated in Village Dholewal, Ludhiana, as per Jamabandi for the year 1979-80 (Ex.P4), purchased by him from one Kishori Lal vide sale deed dated 19.04.1958 registered on 25.04.1958 (Ex.P2). Boundaries of the said plot are duly mentioned in the head note of the plaint. Plaintiff claimed to be in possession of the aforesaid plot since the time of purchase. As defendant

Lachhman Dass (*now through his LRs-appellants and respondents No.2 to 6*) threatened to interfere in the possession of the plaintiff and make encroachment on the same, plaintiff filed a suit for permanent injunction to restrain him (defendant) from doing so. The Court of Id. Sub Judge, Ist Class, Ludhiana issued an injunction order directing the parties to maintain status quo till pendency of the suit. Appeal against that order was dismissed. However, contravening the said injunction order, defendant dispossessed the plaintiff from the suit property and forcibly occupied the same on 08.01.1983, when plaintiff was away and regarding which plaintiff came to know on 10.01.1983. Plaintiff noticed that defendant had raised a wall towards the thoroughfare, had installed hand pump and constructed a small latrine in the suit property and had further opened a door towards the plot in dispute. Plaintiff moved an application to convert the suit for permanent injunction to that of possession and another application to charge the defendant for committing the breach of injunction order. However, that suit was dismissed in default under Order 9 Rule 3 CPC in the absence of both the parties.

3.2 Plaintiff then filed a fresh suit, claiming that there was no impediment in bringing the present suit. Plaintiff prayed for decree for possession over the suit property after demolishing and removing CGI sheets etc. from the suit property as shown red in the site plan and further to issue mandatory injunction directing the defendant to clear the window towards the suit property.

3.3 As defendant Lachhman Dass expired during pendency of the suit, his LRs were brought on record.

4. Defendant, in his written statement, raised some preliminary

objections. He alleged the sale deed relied upon by the plaintiff to be a forged document and further claimed that plaintiff was never in possession of the suit property. Defendant further claimed to be in possession of the suit property for the last more than 12 years and that his possession was upon continuous and undisputed for the last more than 12 years and so, he had become owner of the suit property by way of adverse possession. Defendant further claimed that he was running a dairy on the suit property and having become its owner by way of adverse possession, had installed a hand pump as well as constructed a latrine.

5. In replication, plaintiff reiterated his averments and controverted the stand of the defendant.

6. Following issues were framed for adjudication:

- (1) Whether the plaintiff is owner of the suit property? OPP
- (2) Whether the plaintiff is entitled to possession of the suit property as prayed for? OPP
- (3) Whether the property has not been described correctly in the plaint? OPD
- (4) Relief.

7. Ld. trial Court decided issues No.1 & 2 in favour of the plaintiff. Issue No.3 was disposed of as not pressed. Consequent to these findings, suit was decreed on 31.08.1987. The appeal filed by the defendant was dismissed by the First Appellate Court of Ld. Additional District Judge, Ludhiana vide judgment and decree dated 21.02.1992. Both the Courts gave concurrent finding of the effect that plaintiff is the owner of the suit property and that defendant had failed to establish that he had become owner of the same by way of adverse possession.

8.1 Against the aforesaid findings, this Regular Second Appeal is filed. It is contended by ld. counsel that suit is covered by Articles 64 and 65 of the Limitation Act; that first part of the relief of the plaintiff is based on Article 65 of the Act and the second part is covered under Article 64 of the Act and that plaintiff had miserably failed to prove his possession prior to filing of the suit or to substantiate his claim and so, Courts below have committed a grave error in discussing only the first part of the allegation of the plaintiff.

8.2 It is contended further that plaintiff had only purchased a part of khasra number 2723/2010/497 and that he could not connect the sale deed with the property described in head-note of the plaint. Further, the disputed property is surrounded by houses and constructed property and so, no presumption could be drawn that property described in the plaint is the same property, which is covered under the sale deed relied upon by the plaintiff.

8.3 Further ld. Courts below wrongly ignored the cogent evidence brought on record by the defendant showing his continuous, peaceful and uninterrupted possession over the disputed property for the period of more than 12 years.

8.4 The appellant also moved an application under Order 41 Rule 27 CPC (CM-2056-C-1994) stating therein that on the western side of the property in possession of the appellant, there is a land of India Expeller, which is also on Khasra No.2723/2010/497 i.e. same Khasra number, to which the sale deed of the plaintiff pertains. Two more industries in the name and style of Standard Industries and Surindera Engineering Works also exists there, which could be the land, for which the suit has been filed

as they also exist on the same khasra number. The appellants -defendants further claimed that they are in fact in the possession of different khasra number i.e. 2724/2010/497, which title is based on a sale deed and that respondents-plaintiffs want to take illegal benefit by giving wrong details of the boundaries. In order to substantiate this contention, appellants sought permission to place on record various documents in the shape of revenue record and the sale deeds.

Needless to say that in their reply, the respondents-plaintiffs have opposed the application.

9. I have considered submissions of both the sides and have appraised the record.

10. It is fairly conceded by ld. counsel for the appellants-defendants during arguments that the contention sought to be raised in the application for additional evidence to the effect that appellants are in possession of different khasra No.2724/2010/497 based on a sale deed, is absolutely beyond pleadings. Specific case of the plaintiff-respondent was to be owner of the suit property forming part of Khasra No.2723/2010/497 with specific boundaries given in the head note of the plaint and the site plan. On the other hand, stand taken by the defendant/appellant in the written statement was to have become owner of the suit property by way of adverse possession. Nowhere it was pleaded that defendant-appellant was in possession of Khasra N.2724/2010/497; or that suit property of the plaintiff was not part of khasra number 2723/2010/497.

11. In the aforesaid facts and circumstances, the appellants (LRs of defendant) cannot be allowed to go beyond his pleadings and therefore, the application seeking permission to produce additional evidence under Order

41 Rule 27 CPC in this Regular Second Appeal, is hereby dismissed.

12. Coming to the merits of the case, it is the specific stand of the plaintiff that he is the owner of the suit property on the basis of a sale deed dated 19.04.1958 registered on 25.04.1958 (Ex.P2) and that he has been dispossessed from the same by the defendant during pendency of the previous suit on 08.01.1983, about which plaintiff had come to know on 10.01.1983. Both the Courts below have upheld this contention of the plaintiff to be owner of the property in dispute on the basis of sale deed. The plea of defendant to have become owner of the suit property by way of adverse possession has been disbelieved by both the Courts below by giving detailed reasoning.

13. Even the contention of the appellant/defendant to the effect that boundaries of the suit property as given in the head-note of the plaint did not match with the boundaries given in the sale deed relied upon by the plaintiff, has been duly dealt with by the first appellate Court in para No.10 of its judgment dated 21.02.1992 and it has been found that boundaries of the suit property were mentioned in the sale deed executed in 1958 as per the position, which existed at that time; whereas, the boundaries of the suit property have been mentioned in head-note of the plaint as per the position at that time.

14. Findings of the Courts below to the effect that defendant could not prove his possession over the suit property for the last more than 12 years or to have become owner by way of adverse possession, is a finding of fact based on proper appreciation of evidence.

15. In **“P. Chandrasekharan and Others vs S. Kanakarajan & Others”**2007(3) *RCR(Civil)* 543, it has been held by the Hon'ble Supreme

Court that though as a general rule, High Court will not interfere with the concurrent findings of the Courts below, but it is not an absolute rule. Some of the well recognised exceptions are where:

- (i) the courts below have ignored material evidence or acted on no evidence;
- (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or
- (iii) the courts have wrongly cast the burden of proof.

16. In the present case, this Court does not find any of the exceptions mentioned above to be applicable in the findings of fact given concurrently by the Courts below. The Courts below have rightly held that once the title of the plaintiff regarding suit property was duly proved, it was for the defendant to prove that he had perfected his title by way adverse possession as was alleged by him and defendant-appellant has utterly failed to discharge his onus.

17. As such, finding no merit in the present regular second appeal, the same is hereby dismissed.

18. Before parting with, it is noticed that this court vide order dated 19.5.1993 had stayed dispossession of the appellants from the suit property. Thus, respondent-plaintiff (through his LRs) despite being title holder of the suit property is deprived of the enjoyment of his own property for the last more than 40 years, as he had been dispossessed in January, 1983. Plaintiff had filed the suit in May, 1983 in the hope that he will get possession being owner thorough process of the court. His hopes dashed, as despite winning from two courts below, he could not get possession because

of the stay by this court.

19. In all the above facts and circumstances, appellants & performa respondents (LRs of defendant) are directed to immediately hand over the possession of suit property to the respondent - plaintiff (through his LRs), maximum by 15.5.2024. In case, they fail to do so and the respondent - plaintiff (through his LRs) – Decree Holder, are compelled to file execution for implementation of the decree, the appellants will pay to them user charges at the rate of ₹ 2,00,000/- per month, effective from 16.5.2024, till the suit property is actually vacated and possession is handed over to decree holders.

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

02.05.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Whether //reportable?

Yes

No