

2024.PHHC.148584



RSA-270-1993 (O&M)

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

(102)

RSA-270-1993 (O&M)

Date of decision:- 14.11.2024

Ashok Kumar (Since deceased) through LR's and others ...Appellants

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sudeep Mahajan, Advocate, with
Ms. Saachi Mahajan, Advocate
for the appellants.

Ms. Amrita Garg, Assistant Advocate General, Punjab.

...

SUVIR SEHGAL, J. (Oral)

1. Appellant-plaintiff is in second appeal before this Court assailing the judgment and decree dated 06.01.1993, passed by the learned Additional District Judge, Faridkot.
2. Pleaded case of the plaintiff is that he was in possession of a plot, that he had inherited in khasra No.570, located at Chowk Joginder Singh, Moga, (for short "the disputed property") and he built four shops on the plot. The property was entered in the name of the Church Authorities in the revenue record, who claimed to be its owners. The plaintiff filed a suit against them, which was decreed. General Manager, Punjab Roadways, Moga, also filed applications under the Punjab Public Premises and Land (Eviction and Rent

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Recovery) Act, 1973 (for short “the PP Act”) which were dismissed. Claiming that he is the owner and in possession of the disputed property and that the defendants have no right title, or interest, plaintiff filed a suit for declaration.

3. Upon notice, suit has been contested by the defendants by filing a written statement, wherein they have contested the claim of the plaintiff and asserted that he is in illegal possession. It has been submitted that the shops including site comprising in Khasra No.6874/6543, was acquired by the Punjab Roadways along with some other area from the District Board, Ferozepur, for an amount of Rs.42,200/-, and asserted that they are the owners. Defendants admitted the filing of application under the PP Act, but submitted that it was withdrawn with permission to initiate proceedings afresh. An objection was taken that the suit is not maintainable. On the basis of the pleading of the parties, Trial Court framed issues and after the parties led evidence and were heard, Trial Court by judgment and decree dated 21.08.1989, decreed the suit. Defendants filed an appeal and by judgment dated 06.01.1993, learned Additional District Judge, reversed the findings recorded by the Trial Court and accepted the appeal. Plaintiff has approached this Court in the above backdrop.

4. I have heard counsel for the parties and considered their respective submissions, besides examining the record with their able assistance.

5. The sole issue, which arises for consideration, in the instant second appeal is as to whether the plaintiff is the owner and in possession of the property in dispute.

6. Besides ocular and documentary evidence, the appellant-plaintiff had staked title over the disputed property on the basis of a demarcation report

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dated 08.07.1984, Ex. P-5, prepared by Shri Mukhtiar Singh, PW-2, Naib Tehsildar, Fazilka, who was posted as a Kanoongo in the Circle. In his testimony, Mukhtiar Singh, PW-2, had deposed that the plaintiff was in possession and had constructed shops on the disputed property, which were depicted in the site plan, Ex. P-1. Shri Gurmail Singh, Patwari, DW-4, produced by the respondents, in his cross-examination, also stated this fact. Malkiat Singh, DW-1, Building Clerk, has admitted that the disputed property falls outside the boundary wall of the premises of Punjab Roadways, Moga. Butta Singh, PW-3, Road Inspector, has conceded in his cross-examination that khasra No.570, was never the part of the property of the defendants. A perusal of the ex parte judgment and decree dated 11.03.1985, passed by the learned Additional Senior Sub Judge, Moga, Ex. P-2, also shows that the plaintiff had succeeded in the civil suit filed against the Church and he was held to be owner of the property by way of adverse possession.

7. In first appeal, learned Additional District Judge had, however, discarded the demarcation report, Ex. P-5, on the ground that the defendants were not associated when the property was inspected. In order to determine the actual position at the spot, this Court by way of an interim order passed on 09.07.2024, directed the Deputy Commissioner, to appoint two senior Revenue Officers to conduct a demarcation after notice to both the parties and to submit a report as to whether the disputed property falls in khasra No.570 or 571. In deference to the order passed by this Court, a compliance affidavit was filed along with a copy of the report, translated version of which is reproduced

hereunder:-



“TRANSLATION FROM PUNAJBI TO ENGLISH

Today, in pursuance of the order of Hon'ble Court of Deputy Commissioner-cum-Collector, District Revenue Officer, Moga vide letter No.1902/sk/dated: 11.10.2024 and office of Naib Tehsildar, Moga, vide its order No.1321/Reader dated: 16.10.2024 regarding demarcation of khasra no.570-571, I reached at the spot at khasra No.570-571 at the time already given to the parties, where the officers of Punjab Roadways (Transport) and parties concerning Khasra No.570 and 571 came present. Circle Patwari along with record came present at the spot. From the persons present at the spot, inquiry was made regarding Thadde i.e. permanent points (Marks). In the north of the GT Road towards Eastern Side at the clashing (colliding) point in the street, base line was drawn. Along the road in the North khasra numbers were ascertained/identified at the spot. According to which, the southern side of the Khasra No.570 along the road is 10 karam complete, which falls under Khasra No.570, in dispute. There is passage to the Bus Stand, Joginder Complex and Government Residential Kothis (Accommodations) constructed in Khasra No.571. Area/property in dispute was ascertained identified along the road towards the southern side of the Khasra No.570 and 571, from where it came out there are shops constructed in Khasra No.570 and 10 karam side of the same towards the road is accurate/correct at the spot and Khasra No. 571 along the road 54 karam southern side along 570 there is passage to enter/leading to Bus Stand, after this there is Joginder Complex and after this towards the Western Side there are Government Residential Kothis (Accommodations) constructed. As per spot, Area/property in dispute bearing/falling under Khasra No. 570 is reported/verified.

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Roadways:- Manpreet Singh (TTI),
Satnam Singh (Duty clerk)

SD-
(Inderjit)

Kanugo 25.10.2024

Deepak Ghai (Nazar) Gurjant Singh

Balwinder Singh (T.M)

Sd/-

Sukhdev Singh Chowkidar

Sd/-

Rishi Sood S/o Ashok Kumar

Sd/-

Sukhmander Singh S/o Sarban Singh

Sd/-

Satish Grover S/o Amir Chand

Sd/-

Poonam Sood W/o Ashok Kumar

Sd/-

Rachna Sood W/o Anoop Sood S/o

Kunal Sharma S/o Jaswinder Kumar

Sd/-

Naresh Kumar S/o Balbir Chand

Sd/-

Garima Sood D/o Anoop Sood

Sd/-

Neha Sood D/o Anoop Sood

Sd/-

Gaurav Sood S/o Ashok Kumar”



8. A perusal of the above reproduced report shows that the property in dispute has been verified to be a part of khasra No.570, and it has been reported that some shops were constructed on the plot. This report has been prepared after associating the plaintiff as well as the officials of the defendants and bears their signatures. With this report, the entire controversy has been put to rest and the plaintiff has to be held to be owner and in possession of the disputed property. Findings to the contrary, recorded by the learned Additional District Judge, therefore, cannot be sustained and are liable to be reversed.
9. As a result of the foregoing discussion, the judgment and decree passed by the learned Additional District Judge, Faridkot, is hereby set aside, and the judgment and decree passed by the Trial Court decreeing the suit, is restored.
10. Appeal is allowed with no order as to cost.
11. As the main appeal has been decided, all pending applications stand disposed of.

(SUVIR SEHGAL)
JUDGE

14.11.2024
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes