

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1671 of 1989
Reserved on: March 13, 2024
Pronounced on: April 01, 2024

Om ParkashAppellant

Vs.
Keshari and AnotherRespondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. A.S. Chadha, Advocate for the Appellant
Mr. Manuj Chadha, Advocate for the Respondents

DEEPAK GUPTA, J.

By way of this Regular Second Appeal, the unsuccessful plaintiff has approached this Court challenging the concurrent findings of the Courts below, in as much as Civil Suit No.264 of 1984 titled as “*Om Parkash Vs. Keshari and another*”, filed by the plaintiff (*appellant herein*) for permanent injunction was dismissed on 19.11.1987 by learned Additional Senior Sub Judge, Palwal; and Civil Appeal No.54/13 of 1988 filed by said plaintiff was dismissed on 17.03.1989 by learned Additional District Judge, Faridabad.

2. In order to avoid confusion, the parties shall be referred as per their status before Ld. trial Court.
3. Property in dispute is a vacant plot marked with letters ‘ABCDEF’ in the site plan attached with the plaint, situated within the municipal limits of Hodal Town, detailed in Para N: 1 of the plaint. It was claimed by the plaintiff that the said plot was part and parcel of the property described in para No.2 of the plaint, which was his ancestral property. It was in dilapidated condition and consisted of several houses. Plaintiff and his uncles had let out some of the houses to various tenants. Plaintiff further

claimed that disputed plot had come to his share in a family settlement and so, he had become the absolute owner in possession thereof. It was alleged that without having any right, title or interest, defendants were bent upon to take forcible and illegal possession of the plot in dispute and intended to raise constructions thereon without the consent of the plaintiff. In order to restrain them from doing so, plaintiff prayed for a decree of permanent injunction. Plaintiff also pleaded that in the alternative, if defendants succeeded in taking possession or raise construction of the disputed plot during pendency of the suit, then decree for possession and mandatory injunction be passed by directing the defendants to remove the unauthorised construction.

4. Defendants in their written statement denied the plaintiff to be owner or in possession of the plot. According to them, disputed plot was owned and possessed by defendant No.1, on which there existed his residential house and a courtyard in front of his house and that plaintiff did not have any concern with the same. Defendants further alleges that plaintiff was neither the owner nor in possession of the property described in para No.2 of the plaint and that some of the owners had been wrongly shown as tenants over the same. It was also denied that said property was in dilapidated condition or that same had been rented out to some tenants by the plaintiff or his uncles. Denying any concern of the plaintiff with the disputed property and refuting the contentions made by him, prayer was made for dismissal of the suit.

5. Necessary issues were framed, the material being as to whether the plaintiff was owner in possession of the property in dispute or not. Evidence produced by the parties was taken on record.

6. As the trial Court record would reveal, suit was filed in July,

1984. Plaintiff in his statement claimed that in January, 1986, defendant had taken possession of the suit property and had raised construction thereon and so, he prayed for a decree for possession. Trial Court found that as possession of the defendant was admitted by the plaintiff, so suit for permanent injunction was not maintainable. It was further found that contention of the plaintiff to the effect that defendant had taken possession in January, 1986, is also incorrect, inasmuch as PW2 Om Parkash, the Draftsman, who proved site plan Ex.P1 prepared in June, 1984, admitted during his cross-examination about the existence of a room, wherein defendant Keshari was residing. The trial Court further found that another witness examined by the plaintiff, namely, PW3 Krishan Mohan had admitted that defendant- Keshari was residing in the property in dispute for the last 15-20 years. However, learned trial Court referred to the admission of DW8- Keshari, wherein he stated that suit property was part of a Haveli earlier owned by the plaintiff and based upon this admission, trial Court held that possession of the defendant was adverse and so, he had become owner of the property in dispute by way of adverse possession. The suit was accordingly dismissed.

7. In the appeal filed by the plaintiff, learned First Appellate Court found that the plaintiff had not been able to prove his ownership of the property in dispute at any point of time by way of any documentary evidence and that the oral evidence led by him was not reliable. It was noticed by the Appellate Court that boundaries of the suit property, as testified by the plaintiff were totally contrary to the site plan Ex.P1 and as per details given in para No.1 and 2 of the plaint. Similarly, PW3 had testified the incorrect boundaries and so, none of those witnesses were reliable. First Appellate Court also referred to the statement of DW8- Keshari (defendant) and held

that learned trial Court misread the statement of this witness regarding his admission about the ownership of the plaintiff in property in dispute, inasmuch as defendant – DW8 had clearly stated that plaintiff was the owner of the Haveli in question and not the property out of it, whereas the suit property was situated outside the Haveli. As such, the First Appellate Court held that plaintiff was not able to prove his ownership of the suit property at any point of time. Appeal was accordingly dismissed.

8. Challenging the afore-said findings, learned counsel for the appellant contends that there was no pleading on the part of defendants to have become owner of the property in dispute by way of adverse possession and so, the finding of the learned trial Court in this regard was absolutely incorrect. Learned counsel further contended that since defendant had admitted the plaintiff to be owner of the property in dispute and it was found that defendant was in possession thereof, so suit of the plaintiff for possession was maintainable, as there is no time limit for seeking possession on the basis of title and therefore, his alternative prayer for decree for possession of the suit property should have been allowed.

9. After going through the entire record, this Court does not find any merit in any of the contentions.

10. There is no documentary evidence to prove title of the plaintiff in the suit property. There is categorical finding of fact of the first appellate court that the plaintiff has not been able to prove his ownership of the property in dispute, after making reference to the statements of PW1 (plaintiff), PW2 draftsman and PW3 Krishan Mohan. The First Appellate Court has also referred about misreading of the alleged admission of DW8 (defendant Keshari) about the ownership of the plaintiff in respect of the property in dispute.

11. The afore-said finding of fact as recorded by the First appellate court, cannot be interfered by this Court in the second appeal. No substantial question of law is found to be involved in the present appeal. It has been held by Hon'ble Supreme Court in **Avtar Singh and others Vs. Bimla Devi and another, 2021(13) SCC 816** that Section 41 of the Punjab Courts Act, 1918 (for short, 'the 1918 Act') continues to be in force and not Section 100 of the Code of Civil Procedure in the States of Punjab and Haryana. Under Section 41 of the 1918 Act, the substantial question of law is not required to be framed and that concurrent findings of the facts, cannot be interfered with howsoever erroneous, gross or inexcusable the error may seem to be. These findings of fact include findings based on documentary evidence. Jurisdiction to interfere in the second appeal under Section 41 of the 1918 Act can be invoked only, where there is an error in law or procedure and not merely an error on a question of fact. Hon'ble Supreme Court held further that High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view. Mere findings of fact cannot be interfered with in exercise of second appellate jurisdiction available under Section 41 of the 1918 Act.

12. In the present case, the findings of the Courts below regarding the fact that plaintiff is not in possession of the suit property atleast for the last more than 15 years prior to the date of institution of the suit, is a finding of fact. Similarly, the finding of the First appellate court to the effect that plaintiff has not been able to prove his title to the suit property, is also a finding of fact. The finding of trial Court based on the admission of DW8 to the effect that plaintiff was the owner, has been upset by the First Appellate Court after observing that statement of DW8 – Keshari was misread by the

trial Court. Once it has been found that plaintiff failed to prove his title to the suit property, there can be no question of seeking decree for possession based on title.

13. As such, this Court does not find any scope to interfere in the well-reasoned judgments of the Courts below, dismissing the suit of the plaintiff. As such, finding no merit in the present appeal, the same is hereby dismissed. Decree sheet be prepared accordingly.

April 01, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No