



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

I.

RSA No.500 of 1992
Reserved on: 02.05.2024
Pronounced on: 18.05.2024

ROSHAN LAL AND OTHERS

.... APPELLANTS

Vs.

THAMBU RAM

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Chander Pal Tiwana, Ms. Swati Tiwana, Advocates, for
Mr. R.S. Chahar, Advocate, for the appellants.

Mr. Sanjay Mittal, Advocate, for the respondents.

DEEPAK GUPTA, J.

This Regular Second Appeal is filed by the defendants of the case against reversal, inasmuch suit for permanent injunction regarding property in dispute filed by the plaintiff was dismissed by the Trial Court, but the appeal of the plaintiff was accepted and the suit was decreed by the First Appellate Court.

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

3.1 According to the plaintiff-Thambu Ram (*respondent herein*), he along with proforma defendants are owner in possession of the property in dispute, shown by letters ABCDE in the attached site plan and as detailed in para No.2 of the plaint, on which they had constructed their kaccha and

pucca houses and residing therein. It was alleged that despite having no concern with the same, defendants are bent upon to encroach the same. Prayer was made to restrain the defendants from doing so.

3.2 Some of the defendants contested the suit and in their written statement, they denied the plaintiff/proforma defendants to be owner in possession of the suit property and rather, claimed that they (contesting defendants) are the owner in possession of the same. According to the defendants, suit land is part and parcel of Ahata No.76 Ghar No.136, which was in possession of Ramji Lal in the year 1947 BK and that contesting defendants purchased the agricultural land of Ramji Lal and ever-since the time of purchase of the agricultural land by defendants from Ramji Lal in 2000 BK, they also came in possession of Ghar No.136 along with the agricultural land purchased by them and out of the same, a plot measuring 90' x 65' was given by them to defendant No.13-Bharat Singh, in which he has been residing for the last 30 years after constructing a chapper therein. These defendants claimed further that on account of their long and continuous possession, they had become owner of the suit property by way of adverse possession. They prayed for dismissal of the suit.

3.3 Following issues were framed for adjudication:

1. Whether the plaintiff alongwith the proforma defendants is owner in possession of the property detailed in the head note of the plaint ?OPP
 2. Whether the suit is time barred ?OPD.
 3. Whether the present suit is liable to be stayed on the grounds mentioned in the additional pleas no ? OPD.
 4. Whether the defendants are entitled to special Costs? OPD
 5. Relief.
4. Evidence produced by both the partiers was taken on record.

Ld. Trial Court, issue No.1 held that plaintiff could not prove his title or possession over the suit property. At the same time, it was found that defendants had failed to prove that suit land was part of Ghar No.136, which was recorded to be in possession of Ramji Lal at the time of *bandobast abadi*. Trial Court further found that as per site plan Ex.P2, disputed land was adjoining to the house of the plaintiff, on which a chapper had been constructed with a broken shed as per the report of the Local Commissioner, but the disputed plot was found to be a vacant land, on which possession of none of the parties was found and thus, plaintiff had failed to prove his case. Consequently, the issue was decided against the plaintiff. Finding on issue No.2 went against the defendants. Under issue No.3, it was held that defendants had failed to adduce any evidence to prove their possession over the suit land or to have constructed any house thereon and so, defendants could not claim estoppel against the plaintiff. As such, the issue was decided in favour of the plaintiff and against the defendants. Issue No.4 was disposed of as not pressed. As a result of cumulative findings on all the issues, suit was dismissed vide judgment dated 12.05.1989.

5. In the appeal, the First Appellate Court found that overwhelming oral evidence produced by the plaintiff clearly proved his possession over the suit property; and that defendants had failed to show purchase of the suit land as was claimed by them. It was further observed that even if the plaintiff is able to prove his possession, he is entitled to seek injunction against the wrong-doer. Ld. Appellate Court further found that defendants had also taken the plea to have become owner by way of adverse possession, which they had utterly failed to prove. It was further found that none of the parties were able to prove the title, but from the evidence

produced on file, plaintiff was proved to be in possession and as such, the finding on issue No.1 was reversed by the Appellate Court and consequent thereto, the suit was decreed by allowing the appeal and by setting aside the judgment of the trial Court, vide judgment dated 06.09.1991.

6. Assailing the aforesaid judgment of the First Appellate Court, it is contended on behalf of the appellants-contesting defendants by Id. counsel that possession of the plaintiff-respondent on the suit property has been wrongly held by the First Appellate Court, inasmuch as plaintiff did not even know the length or boundary of the disputed plot; that he could not prove his title or possession; that appellants are in possession of the suit land for the last 35-40 years, having purchased it from Ramji Lal, but the evidence of the appellants-defendants in this regard has been ignored. The plea of respondent-plaintiff to have built the house over suit property is falsified by the site plan and the report of the Local Commissioner, as per which dispute property is found to be a vacant plot. With these submissions prayer is made to set aside the judgment of the First Appellate Court and to restore the judgment of the trial Court by allowing this appeal.

7. Contesting the appeal, Id. counsel for the respondent-plaintiff submits that the finding of the First Appellate Court regarding possession of the plaintiff over the suit property is the finding of fact, based on evidence on record and that there is no material to upset the said finding. Id. counsel contends further that Id. First Appellate Court rightly held that defendants-appellants had failed to prove their possession and that even if plaintiff failed to prove his title, being in possession, he was entitled to seek injunction against a 3rd party/trespasser. Prayer is made for dismissal of the appeal.

8. I have considered submissions of both the sides and have

appraised the record carefully.

9. Plaintiff claimed title and possession over the suit property by specifically mentioning the boundaries thereof in the plaint as well as site plan attached with the plaint. By referring to the overwhelming oral evidence produced by the plaintiff and also after looking to the report of the Local Commissioner, Id. First Appellate Court has come to the conclusion that plaintiff is in possession over the property in dispute, though he failed to prove his title.

10. The specific stand of the appellants-contesting defendants taken in the written statement is that property in dispute is part of Ahata No.76, Ghar No.133, which was in possession of Sewak Ram s/o Jai Ram as per consolidation of 1947 BK. Said Sewak Ram was father of Ramji Lal and that defendants purchased the agricultural land of Ramji Lal in 2000 BK and also came in possession of the adjoining land comprised in Ghar No.136. However, defendants failed to prove the said stand. No doubt, during their evidence, defendants referred to certain revenue documents, but failed to connect the same with the property in dispute. No evidence whatsoever has been produced by the defendants-appellants to show any purchase of agricultural land of Ramji Lal, as is claimed by them. Even if it be assumed that contesting defendants purchased the agricultural land of Ramji Lal, there is nothing on record to suggest that they occupied the land of Ahata No.76 Ghara No.133 or the adjoining land of Ghar No.136, as is claimed by them. Most importantly, there is no evidence worth mentioning that property in dispute is part of either Ahata No.76 Ghar No.133 or Ghar No.136. No demarcation in this regard was got conducted by the defendants. Not only this, the mere fact that defendants claimed to have

become owner by way of adverse possession, show their admission regarding the title of the plaintiff over the property in dispute. Defendants have failed to prove either their title or their possession over the suit property.

11. Further, the finding of Ld. First appellate court in respect of possession of the plaintiff over the property in dispute, is a finding of fact, which is not to be interfered with by this court in second appeal. In ***Kondiba Dagadu Kadam vs Savitribai Sopan Gujar 1999 (3) SCC 722***, it has been held by Hon'ble Supreme Court that:

“It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the Section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add to or enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this Section. The substantial question of law has to be distinguished from a substantial question of fact. This Court in ***Sir Chunilal V. Mehta and Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd.*** [AIR \(1962\) SC 1314](#) held that :-

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question of law."

It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It

is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances, two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

12. In present case, this court does not find the finding of facts as recorded by the first appellate court, in respect of possession of the plaintiff over the property in dispute, to be erroneous or based upon inadmissible evidence or arrived at without evidence. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

18.05.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |