

2024:PHHC:070385



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.502 of 1992
Reserved on: 02.05.2024
Pronounced on: 18.05.2024

ROSHAN LAL AND OTHERS

.... APPELLANTS

Vs.

TEK CHAND SEHREWAT

.... 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.

The present Regular Second Appeal is against the concurrent finding of the Courts below, in as much as, suit filed by the plaintiff - Tek Chand Sehrawat (*respondent herein*) for decree of permanent injunction regarding property in dispute was decreed by the trial court; and the appeal filed by the defendants-Roshan Lal etc. (*appellants herein*) was dismissed 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, he is owner in possession of the suit property marked by letters ABCD in the attached site plan and as detailed and described in head note of the plaint. Alleging interference in his

possession on the part of defendants, without having any right to do so, plaintiff prayed for decree of permanent injunction so as to restrain them from doing so.

3.2 Contesting defendants denied any concern of the plaintiff with the suit property. According to them, they are owner in possession thereof and that they had constructed hutments thereon and had put their dung cakes and fire woods etc. therein. They further pleaded that being in possession for the last 50-60 years, they had become owner by way of adverse possession. They prayed for dismissal of the suit.

3.3 In rejoinder, plaintiff reiterated his case.

4. Following issues were framed for adjudication:

1. Whether the plaintiff is owner and in possession of the property in dispute? OPP
2. Whether defendants have been in possession of the suit property for more than 50-60 years and they have become its owners by adverse possession? OPD.
3. Whether the suit barred by limitation? OPD
4. Whether plaintiff has no locus standi to bring the suit and his for injunction is not maintainable. OPD
5. Whether suit is false and frivolous and contesting defendants are entitled for compensatory costs? OPD.
6. Relief.

5.1 Evidence produced by both the parties was taken on record.

Ld. Trial court took Issues No.1 and 2 together and on the basis of evidence led by the parties, came to the conclusion that it is the plaintiff, who was in possession of the property in dispute, though he had not been able to prove his title. It was further found that defendants had failed to prove their possession over the suit property. As such, the issues were decided in favour

of the plaintiff and against the defendants. The findings on the other issues No.3 to 5 went against the defendants. Consequent to these findings, suit was decreed on 27.01.1988.

5.2 The aforesaid findings, as recorded by the trial Court, have been upheld by the First Appellate Court of Id. Additional District Judge, Narnaul. Vide judgment dated 24.08.1991, the First Appellate Court, dismissed the appeal.

6. Assailing the aforesaid concurrent findings, it is contended by Id. counsel for the appellants-defendants that Courts below erred in holding the plaintiff to be in possession and further erred by holding the appellants to be not the owner in possession. Only oral evidence was adduced by the plaintiff; whereas the appellants-defendants had produced oral as well as documentary evidence to prove their title and possession. The evidence of the appellants has been wrongly discarded. Appellants had also relied upon Ex.PF pertaining to Khasra No.76, of which the appellants are owner in possession, but that has been discarded by the Courts below. Prayer is made to set aside the judgement of the Courts below and to dismiss the suit of the respondent-plaintiff, by allowing this appeal.

7. Needless to say that respondents contested the appeal. Id. counsel contends that finding of the Courts below regarding possession of the plaintiff-respondent on the suit property, is the finding of fact and that there is no illegality so as to interfere therein.

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

9. Perusal of the evidence adduced on file would reveal that in order to prove his possession over the suit property, plaintiff Tek Chand

relied upon not only his own testimony by appearing in the witness box as PW2, his statement has been supported further by as many as 12 others witnesses. Of course, defendants also examined five witnesses to prove their possession and also placed on record some revenue documents to contend that they were the owner in possession, but the evidence produced by the defendants is not at all convincing.

10. It is noticed by this Court that the revenue documents tendered in evidence by the defendants pertain to Khasra No.26 of Rectangle No.31. Appellants also contend to have produced the documents pertaining to Khasra No.76. However, all these contentions or evidence in respect of any such particular Khasra number, purported to be of suit property are beyond pleadings. Perusal of the written statement of the defendants-appellants would reveal that it was never their stand that suit property was part of any particular khasra number. Even if it be assumed for the sake of arguments that suit property was part of any particular khasra number, as is claimed by the appellants-defendants, no evidence whatsoever was adduced to show any demarcation of the suit property to prove that suit property, found to be in possession of the plaintiff, was part of that khasra number.

11. The finding of the Courts below regarding possession of the plaintiff over the suit property, is the finding of fact based on proper appreciation of evidence. 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.”

12. 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.

13. This Court does not find the present case to be falling in any of the above said exceptions, so as to call for any interference.

Dismissed.

18.05.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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