

2024:PHHC:150277



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

RSA-2913-1996 (O&M)
Reserved on : 21.10.2024
Pronounced on : 19.11.2024

M/s JAGATJIT INDUSTRIES LTD.Appellant

VERSUS

VICHAR SINGHRespondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vivek Salathia, Advocate for the appellant.

Mr. Naresh Prabhakar, Advocate for the respondent.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 03.10.1996 passed by the First Appellate Court whereby the judgment and decree dated 25.05.1992 passed by the Trial Court was reversed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed the present suit for restraining the defendant-respondent from making any construction or encroaching upon the vacant land contiguous to the house occupied by the defendant-respondent being an employee of the plaintiff-appellant Company. It was averred in the plaint that the plaintiff-appellant was owner in possession of vast land as shown in the site plan and the copy of the jamabandi. On a portion of land comprised in Khasra Nos.1780/4-2, 1781/8-0, 1782/8-0, 1786/8-0, 1787/4-18, 1788/3-13, the plaintiff-appellant had constructed houses where the defendant-

respondent and other employees of the plaintiff-appellant were allowed to reside. Their possession was permissive otherwise they have no right to occupy the property. The property had been given for use and occupation only. In portion of Khasra Nos.1782 and 1786 the defendant-respondent was allowed to reside in the house constructed by the plaintiff-appellant. The defendant-respondent had collected building material near the site with the purpose of encroaching upon the area shown in red in the rough site plan.

3. The defendant-respondent appeared and filed his written statement averring therein that the plaintiff-appellant had nothing to do with the site in dispute and that it was part of the house of the defendant-respondent. It was further the stand taken that there are as many as 300 odd houses in the area where the defendant-respondent is residing. The ownership of the plaintiff-appellant was also controverted. It was further averred that the defendant-respondent had been in possession of the house and the site in dispute for the past 40 years and that he had become owner of the same by way of adverse possession.

4. From the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is owner in possession of the property in dispute ?
2. Whether the defendant has become owner of the site in dispute by adverse possession ?
3. Whether the plaintiff is entitled to the injunction prayed for ?

4. Whether the plaintiff has no cause of action ?

5. Relief.

5. The Trial Court held that the plaintiff-appellant had proved its ownership of the property and as also the fact that the defendant-respondent was residing in the house with the permission of the plaintiff-appellant. The plea of adverse possession was rejected. It was held that the plaintiff-appellant had proved its title, possession over the disputed property and hence the decree of injunction was passed. Aggrieved by the same an appeal was preferred by the defendant-respondent. The First Appellate Court vide impugned judgment and decree dated 03.10.1996 reversed the judgment and decree dated 25.05.1992 passed by the Trial Court and, while affirming the finding regarding adverse possession as given by the Trial Court, held that the plaintiff-appellant had no right to restrain the defendant-respondent from making construction on the portion of the land occupied by him and that the plaintiff-appellant could file a suit for possession. Hence, the present regular second appeal by the plaintiff-appellant.

6. The learned counsel for the plaintiff-appellant would contend that it is an admitted position that 300 odd houses were built by the plaintiff-appellant for the residence of its employees and one such house is occupied by the defendant-respondent. Learned counsel has referred to the fact that the defendant-respondent had himself filed a suit (Ex.P-4) wherein on the West there was vacant land shown. The said suit was subsequently withdrawn on 25.10.1989. Learned counsel would further contend that the plea of adverse possession was rejected by both the Courts. It is further the

argument that once the plea of adverse possession was rejected the ownership of the plaintiff-appellant stood proved inasmuch as adverse possession can only be claimed against a true owner. It is further the contention that permission was given to the defendant-respondent to only reside in the house being an employee of the plaintiff-appellant and that he had no right to encroach upon the said land and that before the encroachment could actually be made the civil suit was filed by the plaintiff-appellant for injunction. Hence it could not be said that the defendant-respondent was in possession of the said vacant land in any manner.

7. *Per contra*, the learned counsel for the defendant-respondent would contend that the defendant-respondent has been held to be in possession of the suit land and that the suit was only for injunction and hence the plaintiff-appellant would have to file a suit for possession in case the plaintiff-appellant wanted possession of the property.

8. Heard.

9. In the present case admittedly the suit land belongs to the plaintiff-appellant who is the owner of the same as well as the adjoining areas where a factory has been built by the plaintiff-appellant. 300 odd houses were constructed for the use and occupation of the employees of the plaintiff-appellant. The said accommodation provided to the employees is a measure of goodwill and a gratuitous gesture. The defendant-respondent had earlier also tried to encroach upon the property and had also filed a civil suit (Ex.P-4) for permanent injunction for restraining the defendant therein i.e. the plaintiff-appellant herein from taking forcible possession of the house

and in that suit on the West vacant land was shown. Both the Courts have concurrently rejected the plea of adverse possession. The ownership of the plaintiff-appellant is not in dispute as both the Courts have concurrently held the plaintiff-appellant to being the owner of the suit property. Once the plaintiff-appellant is shown to be the owner of the suit property and the plaintiff-appellant had filed the suit for permanent injunction before any construction could be raised coupled with the fact that the defendant-respondent had failed to show any right, title or interest over the disputed property, the impugned judgment and decree passed by the First Appellate Court cannot be sustained.

10. In view of the judgment of the Hon'ble Supreme Court in the case of **Pankajakshi (Dead) through LRs & Ors. vs. Chandrika & Ors.** [AIR 2016 SC (Civil) 1091] there would be no requirement to frame substantial questions of law.

11. In view of the above, the present regular second appeal is allowed, and the impugned judgment and decree passed by the First Appellate Court is set aside and those of the Trial Court are restored. Pending applications, if any, also stand disposed off.

19.11.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No