

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

132

RSA-877-2024 (O&M)
Date of Decision : 01.04.2024

JOGINDER SINGH

.... Appellant

VERSUS

SADHU SINGH & ORS.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jai Bhagwan, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present Regular Second Appeal has been preferred by plaintiff No.2-appellant against the judgments and decrees dated 01.02.2019 and 11.01.2024 passed by the Trial Court and the First Appellate Court, respectively.

2. The brief facts relevant to the present case are that the father of plaintiff No.1 and grandfather of plaintiff No.2 was a co-owner in possession of the land measuring 5 Bighas 5 Biswas comprised in Khasra No.701/73 and in land bearing Khasra No.907/613/245/1-3 and Khasra No.909/245/1/0-7 situated at Village Imamgarh. In the year 1975 land measuring 2 Bighas 13 Biswas comprised in Khasra No.701/73 was acquired by the Government of Punjab and Mutation No.529 was sanctioned in the name of Punjab Government. Thereafter, Government of Punjab vide Transfer No.561 allotted plots measuring 2 Biswas each from the acquired land to the private persons including defendant-respondents No.1 to 9 and their forefathers. Plaintiff No.2-appellant herein along with one Rajinder Singh filed a suit for

permanent prohibitory injunction restraining defendant-respondents No.1 to 9 from taking forcible possession over the land bearing old Khasra No.701/73 (presently bearing Khasra No.751/70/73 to Khasra No.774/701/73). The case set up by the plaintiffs was that the land bearing old Khasra No.701/73 and land bearing Khasra No.907/613/245/1-3 and Khasra No.909/245/1/0-7 adjoin each other and that defendant-respondents No.1 to 9 had already constructed their houses in the land of plaintiff No.2-appellant bearing Khasra No.907/613/245/1-3 and Khasra No.909/245/1/0-7 in lieu of the allotment made by the Government of Punjab vide Transfer No.561. It was further the case that defendant-respondents No.1 to 9 had built on the land of plaintiff No.2-appellant leaving their claim over the land situated in Khasra No.701/73. It was further the case that though Khasra No.907/613/245/1-3 and Khasra No.909/245/1/0-7 are shown to be in the ownership of plaintiff No.2-appellant but plaintiff No.2-appellant never interfered in the possession of defendant-respondents No.1 to 9 in their houses constructed over Khasra No.907/613/245/1-3 and Khasra No.909/245/1/0-7 but now due to party friction in the Village and due to greed the defendant-respondents No.1 to 9 were bent upon taking forcible possession over the land bearing Khasra No.701/73. Plaintiff No.2-appellant also filed a civil writ petition being CWP-14821-2014 which was disposed off vide order dated 30.07.2014 with an observation that plaintiff No.2-appellant, if aggrieved, could approach the Civil Court concerned for relief.

3. On notice defendant-respondents No.1 to 7 appeared and filed their written statement raising preliminary objections pertaining to maintainability, suit being bad for mis-joinder and non-joinder of necessary parties and non-service of the notice under Section 80 CPC upon the officials. On merits it was admitted that father of plaintiff No.1 and grandfather of plaintiff No.2-appellant was co-owner in possession of the land measuring 5 Bighas and 5 Biswas. Subsequently land measuring 2 Bighas and 13 Biswas comprised in Khasra No.701/73 was acquired by the Government of Punjab and Mutation No.529 was sanctioned in the name of Punjab Government. Thereafter the Government of Punjab allotted plots measuring 2 Biswas each from the acquired land to the private persons including defendant-respondents No.1 to 9 and their forefathers vide transfer No.561. It was the case set up by defendant-respondents No.1 to 7 that they were the owners and possession of Khasra No.701/73 and their names are also reflected in the revenue records. Defendants No.10 to 12 filed their separate written statement. Defendant No.13-Gram Panchayat also filed separate written statement admitting the claim of plaintiff No.2-appellant. However, it was denied that defendant-respondents No.1 to 9 were bent upon to take forcible possession over the land bearing Khasra No.701/73.

4. Replication was filed reiterating the averments made in the plaint and denying those made in the written statements.

5. On the basis of the pleadings of the parties the following issues were framed :-

- A. Whether the plaintiffs are entitled to permanent injunction as prayed for ? OPP
- B. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
- C. Whether the plaintiffs have not come to the Court with clean hands and have suppressed the material facts from the Court ? OPD
- D. Relief.

6. The Trial Court vide judgment and decree dated 01.02.2019 dismissed the suit of the plaintiffs. Aggrieved by the same an appeal was preferred which was also dismissed by the First Appellate Court vide judgment and decree dated 11.01.2024. Hence, the present Regular Second Appeal.

7. Learned counsel for plaintiff No.2-appellant would contend that though the land of plaintiff No.2-appellant was acquired which was fell in Khasra No.701/73, however, defendant-respondents No.1 to 9 who were allotted 2 Biswas of land by the Government of Punjab after acquisition chose not to construct on Khasra No.701/73 and constructed their houses on Khasra No.907/613/245/1-3 and Khasra No.909/245/1/0-7. Plaintiff No.2-appellant did not object to the same, however, now they are trying to construct on Khasra No.701/73 and if they are allowed to do so the plaintiff No.2-appellant would be left high and dry as his land in Khasra No.701/73 stood acquired and the land of plaintiff No.2-appellant in Khasra

No.907/613/245/1-3 and Khasra No.909/245/1/0-7 has been encroached upon by defendant-respondents No.1 to 9.

8. Heard.

9. In the present case admittedly the land falling in Khasra No.701/73 stood acquired by the Government of Punjab in the year 1975. After the acquisition the acquired land was allotted to various persons including defendant-respondents No.1 to 9. Plaintiff No.2-appellant had sought to make out a case that Khasra No.701/73 was lying vacant and there was nothing constructed upon it. The Trial Court, however, found that the same stood falsified from the Khasra Girdawries (Ex.D-3 to Ex.D-21) which reflected that houses of various persons have been built upon the said land. It is an admitted case of plaintiff No.2-appellant that the land falling in Khasra No.701/73 stood acquired by the Government of Punjab way back in the year 1975. After a gap of about 35 years the present suit was filed with regard to Khasra No.701/73 qua which plaintiff No.2-appellant has no right, title or interest left. The land stood acquired by the Government of Punjab, it vested with the Government of Punjab and thereafter the acquired land stood allotted to defendant-respondents No.1 to 9. Learned counsel for plaintiff No.2-appellant has not been able to convince this Court that plaintiff No.2-appellant has any right, title or interest left in Khasra No.701/73 qua which the present suit was filed. The argument of the learned counsel for plaintiff No.2-appellant that defendant-respondents No.1 to 9 though were allotted 2 biswas of land out of the acquired land falling in Khasra No.701/73,

however, they built on Khasra No.907/613/245/1-3 and Khasra No.909/245/1/0-7 and hence plaintiff No.2-appellant would have a right on Khasra No.701/73 deserves to be rejected on the ground that plaintiff No.2-appellant has admittedly no right, title or interest left in Khasra No.701/73 which stood acquired by the Government of Punjab in the year 1975 and thereafter the same was allotted to defendant-respondents No.1 to 9. In case defendant-respondents No.1 to 9 have encroached upon the land of plaintiff No.2-appellant, it was for him to have raised an issue at the relevant point of time. After 35 years a suit is being filed and that too not regarding the land comprised in Khasra No.907/613/245/1-3 and Khasra No.909/245/1/0-7 rather regarding Khasra No.701/73 in which plaintiff No.2-appellant has no right, title or interest left.

10. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.04.2024

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO