

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-155-2018 (O&M)

Pronounced on : 15.03.2024

Manjinder Pal Singh through his LR Parminder Kaur

...Appellant

Versus

Bachan Kaur and others

...Respondents

CORAM: HON’BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Inderpal Singh Parmar, Advocate
for the appellant.

RITU TAGORE, J.

CM-321-C-2018

Prayer is for condoning delay of 61 days in refiling the appeal.

For the reasons mentioned in the application, delay of 61 days in
refiling the appeal is condoned.

Application is disposed of accordingly.

CM-322-C-2018

Prayer is for condoning delay of 85 days in filing the appeal.

For the reasons mentioned in the application, delay of 85 days in
filing the appeal is condoned.

Application is disposed of accordingly.

CM-323-C-2018

Heard on application for bringing on record the LRs of deceased
appellant-Manjinder Pal Singh. Application is duly supported by the affidavit
of his LR-Parminder Kaur.

In view of the averments made in the application, same is allowed and Parminder Kaur-LR of deceased-appellant is ordered to be brought on record, subject to just exceptions.

Amended memo of parties is taken on record.

RSA-155-2018

1. Appellant-defendant has not been able to defend the suit for permanent injunction preferred by respondents-plaintiffs, before the learned Courts below and has filed this appeal.
2. Respondents-plaintiffs instituted a suit for permanent injunction against the appellant-defendant with averments that defendant or his assignees/associates be restrained from interfering or causing any interference in their peaceful possession over the suit property i.e., a residential house measuring 60 feet x 180 feet approximately, situated in Grewal Colony known as Basant Vihar Colony, Noorwala Road (village Phambra) Ludhiana, shown in the site plan attached and bounded with the boundaries detailed in the head note of the plaint, forcibly or illegally except in due course of law.
3. For the sake of convenience, herein, parties are referred to as per their status before the learned trial Court.
4. According to the plaintiffs, Kehar Singh their predecessor-in-interest was the owner of several acres of agriculture land and out of the said land, the plaintiffs raised construction of a residential house on a plot measuring 1200 square yards (60 feet x180 feet), as detailed in the head note of the plaint and started residing there. It is stated that over the time, the area developed and became popular as a Basant Vihar Colony, Ludhiana.
5. According to the plaintiffs, defendant is the grand-son of plaintiff No.1 and has been residing separately from them for many years in his

separate house built nearby the land and now they have no relations with each other since long time. Plaintiffs also pleaded that they have been in possession of the suit property since the life time of Kehar Singh. They have their ration cards, birth certificates and other facilities in their names on the suit property. It is asserted by the plaintiffs that after the death of Kehar Singh on 30.04.2000, who died intestate, the defendant started threatening to dispossess them forcibly and illegally from the suit property, having no right, title, or interest in the same, and also made an attempt in said regard, but could not succeed due to timely intervention of the respectables that necessitated them to file the suit.

6. Appellant-defendant, upon appearance, filed his written-statement and denied the assertions of the plaintiffs to have raised any construction on the suit property or being in physical possession of it. Instead, pleaded to dismiss the suit of plaintiffs on the ground of vagueness and lack of proper description of the suit property, including its revenue or municipal number. Defendant admitted that deceased Kehar Singh was his grand-father, original owner of the suit property, however, asserted that Kehar Singh executed a Will dated 07.07.1993 in his favour for the services rendered by him to his grandfather and claimed his ownership on the suit property. He also pleaded that a suit for permanent injunction filed by him against the plaintiffs is pending for adjudication. On the above material assertions, defendant pleaded for dismissal of the suit of plaintiffs being devoid of merits.

7. Based on the rival pleadings, the learned trial Court framed the following issues:-

“(i) Whether the plaintiff is in possession of the suit property? OPP

(ii) Whether the plaintiff is entitled to injunction as prayed for? OPP

(iii) Whether plaintiff has no cause of action? OPD

(iv) *Whether suit property is not properly and completely described, if so, its effect? OPD*

(v) *Relief.”*

8. Plaintiffs in order to prove their case, examined Tajinder Singh-plaintiff No.3, who appeared as PW-1 and tendered his affidavit PW-1/A reiterating the averments of the plaint and also tendered documents i.e., copy of ration card (Ex.P-1), copy of telephone bill (Ex.P-2), copy of birth certificate (Ex.P-3), copy of marriage certificate (Ex.P-4), site plan (Ex.P-5) and copy of judgment and decree dated 06.02.2014 passed in civil suit titled as Manjinder Pal Singh vs Satwant Singh & Ors (Ex-PX). Harbhajan Singh (PW-2), Jasbir Singh (PW-3) and Vinay Katyal (PW-4) supported the version of the plaintiffs by tendering their respective affidavits in this regard.

9. On the other hand, to rebut the case of the plaintiffs, defendant himself appeared as DW-3 and repeated the version of his written statement. He also tendered documents i.e., attested copy of judgment and decree dated 28.01.2012 (Ex.D-1); copy of statement of Surinder Singh (Ex.D-2); copy of statement of Raj Kumar Lambardar (Ex.D-3/D-10); attested copy of Will dated 07.07.1993 (Ex.D-4/D-12); endorsement on the Will (Ex.D-5); attested copy of judgment and decree dated 14.05.2012 (Ex.D-6); attested copy of the issues framed in the said suit (Ex.D-7); attested copy of amended plaint (Ex.D-8); attested copy of written statement (Ex.D-9); copy of statement of Raj Kumar Lambardar (Ex.D-10); copy of statement of Surinder Singh (Ex.D-11); Will dated 07.07.1993 (Ex.D-4/D-12); *nakalbenama* dated 31.05.1994 (Ex.D-13); *jamabandi* for the year 1997-98 (Ex.D-14). In support of his version defendant also examined Somnath as DW-1 and Krishan Kumar as DW-2.

10. While answering issue No.1 and 2 collectively, learned trial

Court noted and considered material admissions made by defendant and his witnesses, admitting the long and settled possession of the plaintiffs on the suit property, and also observed that suit property is clearly identifiable from the boundaries, as well as the area mentioned by the plaintiffs in the plaint. Consequently, decreed the suit of the plaintiffs, restraining the defendant and his assignees/associates or anybody else on his behalf, in causing any interference in the peaceful possession of the plaintiffs or dispossessing them from the suit property, forcibly and illegally, except in due course of law.

11. First appeal filed by the defendant was dismissed vide judgment and decree dated 18.10.2016 passed in Civil Appeal No.84 of 10.12.2015 by Additional District Judge, Ludhiana, affirming the findings of the learned trial Court, leading to filing of the present Regular Second Appeal by the defendant.

12. Learned counsel for the appellant submitted that the findings of the Courts below are indefensible in the eyes of law as they failed to appreciate the evidences in correct perspective, whereas the appellant has been able to establish his ownership of the house in dispute. It is stated that findings of the Courts below are based on surmises and conjectures and are liable to be set aside.

13. In the present case, both parties have admitted their relationship with each other through their common ancestor Kehar Singh. The plaintiff No. 1 Bachan Kaur is none other than the widow of Kehar Singh. The defendant has admitted that Kehar Singh was his grandfather and owned the suit property. The averments of the plaintiffs that plaintiff No.1 is the grandmother, plaintiff No.2 is the uncle and plaintiff No.3 is cousin of the defendant are also not in dispute by the defendant.

14. As far as the identity of the suit property is concerned, learned

Trial court has categorically observed that same is effectively established from the record. The plaintiffs have mentioned specific boundaries and area of the suit property and from the same the suit property is clearly identifiable. On the other hand, defendant and his witnesses in their testimonies have not disputed the identity of the suit property. Contrary, defendant has admitted that plaintiffs are in possession of the suit property i.e., a house, as detailed in the plaint, regarding which he has filed a suit for mandatory injunction against the plaintiffs to get the house vacated from them. This admission clearly indicates that there is no dispute regarding the identity of the suit property and also establishes the possession of the plaintiffs on the suit property.

15. In para No.22 of the judgment, learned Trial Court categorically observed that defendant Manjinder Pal has admitted his separate residence in an adjacent house to the disputed property for the last 20 years. He also admitted that plaintiffs have been residing in the disputed property for the last 15 years. Somnath DW-1, a witness of the defendant, also admitted that the defendant is residing separately from the plaintiffs. Although, learned trial Court observed that in judgments Avjinder Kaur Vs. Manjinder Pal Singh and others dated 28.01.2012 (Ex.D-1) and Bachan Kaur and another Vs. Manjinder Singh dated 14.05.2012 (Ex. D-6), defendant, Manjinder Pal Singh was held as owner of the property left by deceased Kehar Singh on the basis of Will dated 07.07.1993, yet concluded that defendant has failed to establish that plaintiffs are in illegal possession of the suit property. The learned trial Court on the basis of evidence and material evidentiary admissions made by defendant and his witnesses, observed that plaintiffs have been able to establish that they are in settled possession of the suit property since life time of Kehar Singh.

admissions made by defendant and his witnesses regarding possession of the plaintiffs in the suit property, also examined the documentary evidence namely, ration card (Ex.P-1), Copy of telephone bill (Ex.P-2), birth certificate (Ex.P-3), marriage certificate (Ex.P-4) presented by the plaintiffs to conclude that plaintiffs have been residing on the disputed property for a considerable period. The learned counsel for the appellant failed to point out any infirmity in the aforesaid findings arrived at by the Courts below on account of any misreading or misinterpretation of the evidence.

17. It is settled position of law that in a suit where plaintiff(s) plead(s) his lawful or peaceful possession over the suit property and as such his possession is interfered with or threatened by the defendant(s), plaintiff is required to establish his possession and as such has right to protect his possession against such unlawful interference.

18. Now, coming to the facts of the present case, defendant and his witnesses have made categorical, clear and clean admissions that Kehar Singh was their predecessor-in-interest, who owned the suit property and that plaintiffs have been residing in the suit property for the past more than 10-15 years and defendant is living separately with his family in another house near to the property in dispute. These plain admissions have been rightly relied upon by the Courts below in concluding that plaintiffs are in settled peaceful possession of the suit property. It is a rule of law that the Court can pronounce the judgment on the basis of clear, categorical, unequivocal admissions of fact(s) in issue made by a party. Admissions are strong piece of evidence against the party making it and are generally binding upon the party making it, when same are clear and are not withdrawn or explained. Once a person is in old settled possession of the property, he certainly cannot be evicted by force or illegally except by due process of law.

19. All the facts and circumstances discussed above, when taken together makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity or absurdity.
20. No other point was urged.
21. For the reasons stated above, I do not find any illegality or infirmity in the concurrent findings recorded by the learned Courts below, which are based on application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law. The findings are affirmed, accordingly. Resultantly, there is no merit in the appeal and same is, hereby, dismissed.
22. Pending miscellaneous applications, if any, also stand disposed of accordingly.

(RITU TAGORE)
JUDGE

Pronounced on: 15.03.2024
Rimpal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No