

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.240 of 2020(O&M)
DATE OF DECISION: 03.05.2024

Dalip SinghAppellant

VERSUS

Sat NarainRespondent

CORAM HON’BLE MR. JUSTICE GURBIR SINGH

Present Mr.Chanderhas Yadav and Mr. Manish Giri, Advocates
for the appellant.

GURBIR SINGH, J.

1. Appellant/plaintiff has filed the appeal against the concurrent findings of both the Courts below, whereby suit as well as the appeal of the plaintiff filed against the defendant for permanent injunction were dismissed by the learned trial Court as well as the learned Appellate Court.
2. Parties are being addressed as per their status in the original plaint.
3. Plaintiff filed a suit for permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiff over the suit land as shown in red colour and depicted with letters marked ABCD.
4. Case of the plaintiff in brief is that plaintiff is in continuous possession of the suit property and same is being used for storing wood sticks, cow dung etc. and earlier it was used for preparing lime-mortar for building materials. Defendants having no right, title or interest in the suit property but they are bent upon to interfere in the peaceful possession of the plaintiff over the suit land.
5. Defendants contested the suit by filing written statement and submitted that the ancestor of defendant was in adverse possession of disputed land as well as other adjoining land and enjoyed the same to the knowledge of public at large. After

his death, his Ist class heirs including Partap Singh were owners in possession of disputed property. As per mutual settlement, the disputed property came to the share of Partap Singh and on his death came to defendant being his class one legal heir. Defendant is in possession of the suit property.

6. After framing of the issues, plaintiff examined Abhay Singh as PW1, Surat Singh as PW2 and Ved Bhushan Yadav as PW4. Plaintiff himself stepped into the witness box as PW3. Thereafter, evidence of the plaintiff was closed by his counsel.

7. On the other hand, defendant no.1 Sat Narain himself stepped into the witness box as DW1 and also examined Ratiram as DW2, Dinesh Kumar, Civil Draftsman as DW3, Raghubir as DW4 and Mohan Lal as DW5 and thereafter, the evidence of the defendant was closed by order of the Court.

8. Learned trial Court after appreciating the evidence held that plaintiff has failed to disclose from whom and how the property came to him. Whether plaintiff purchased suit property or it came to the plaintiff from his ancestors. Plaintiff did not disclose the source from where he got the suit property and has not even in the site plan depicted where his residential property was situated. PW1, PW2 and PW3 have disclosed the different dimensions of the suit land. In the site plan Ex.DW1/B residential property of the defendant is shown in blue colour. On the southern side of the residential property of defendant is the property of Ranbir, cousin of the defendant. Suit property is surrounded by land of defendant and by its location itself, it can be safely held that defendant is in possession of suit land. The plaintiff failed to prove his possession over the suit property.

9. Suit of the plaintiff was dismissed and the learned Appellate Court also dismissed the appeal.

10. Counsel for the appellant has argued that PW4 Ved Bhushan Yadav has proved the site plan Ex.PW3/B of the plaintiff, which proves that plaintiff is using the suit land for storing cow dung and using as dump yard. The other witness of the

plaintiff has also supported the averments of the plaintiff and proved the possession of the suit property and therefore, possession of the plaintiff over the suit property is duly proved.

11. I have heard the submissions of the learned counsel for the appellant.

12. It is well settled that plaintiff is required to stand on its own legs.

Whoever desire any Court to give judgment as to any legal right dependent on the existence of facts which he asserts must prove that these facts exists. Plaintiff is claiming that he is in possession of the suit property. There is no documentary evidence to support the version of the plaintiff that he is in possession of the suit property. Although plaintiff has proved the site plan EX.PW3/B but the site plan which was got prepared from draftsman is not sufficient proof that a person is in possession of that property. No overt act has been proved by the plaintiff that he even came in possession and is in continuos possession of the suit property. Even, in the prayer clause also plaintiff himself is not sure whether he is in possession of the suit property or defendant is in possession of the suit property. The claim as made up by the plaintiff as shown in the decree sheet is as under:-

Defendant. Claim:-

A. That a decree for permanent injunction to the effect that defendant may kindly be restrained from occupying the above said suit property which has clearly been shown in the site plan with red colour and with letters marked ABCD and not to starts any kind of construction over the same having without any right, be passed in favour of the plaintiff and against the defendant.

B. That if the defendants by use of force succeeded in occupying the above said property of the plaintiff and to make any kind of construction over the suit land, then a decree for demolition by way of mandatory injunction be also passed restoring the above said land in previous position, be also in favour of the plaintiff against the defendant.

C. xxxxx

D. xxxxx."

13. It is the case of the plaintiff that he is using the suit property for storing cow dung etc. and lien was used for preparing lime mortar for building material. No date is mentioned when this property was being used for preparing lime mortar. Mere storing cow dung and wooden sticks does not prove a case in favour of the plaintiff. In case of Bhan Singh and others v. Tej Singh and others 1997(1) RCR Civil 46, a bench of this Court taking note of similar facts has observed as follows:-

"5.No doubt, if the plaintiff failed to prove his ownership over the Bara in question still he was entitled to get a decree for injunction on the basis of the established possession. The evidence, which has been led by the plaintiff was so unsatisfactory that it has to be concluded that by mere user in the shape of the throwing rubbish does not establish the possession of the plaintiff, who has come to the Court to claim the injunction. Mere acts of user, such as throwing rubbish, placing dung cakes, tethering cattle, installation of pegs may be weak links to say that a particular litigant is using the property but such user has to be secluded separately from the acts of possession, for which overt act is necessary for such litigant to establish that he had been exercising his possession with the intention to retain it by excluding others over the Bara in question.....".

Both the courts have rightly held that since the plaintiff himself has failed to prove his possession over the suit property, he is not entitled for injunction. There is neither any misappreciation of evidence nor misreading of evidence. No substantial question is involved in the present appeal.

14. The appeal being without merit is hereby dismissed.

03.05.2024
mamta

(GURBIR SINGH)
JUDGE

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