

(2008) 05 P&H CK 0059

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Bawa Singh and Others

APPELLANT

Vs

Harnam Singh and
Others

RESPONDENT

Date of Decision: May 27, 2008

Acts Referred:

- Evidence Act, 1872 - Section 145, 21, 62, 63, 64

Citation: (2008) 4 CivCC 376 : (2008) 4 CivCC 376 : (2008) 152 PLR 75 : (2009) 5 RCR(Civil)
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Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Permod Kohli, J.

Both the parties are claiming possession over the suit property. The appellants herein are the defendants in the suit filed by the respondent-plaintiffs seeking a permanent injunction against the present appellants from taking forcible possession of the suit land without any right. The defendants, however, pleaded that the suit property is under the ownership of Harijan Cooperative Land Owning Society Limited, which is a registered society and the suit land was given to them for cultivation by Nika Singh, their father.

2. On the basis of the pleadings of the parties, the learned trial Court framed the following issues:

1. Whether the plaintiff is owner in possession of the land in dispute? OPP
2. Whether the defendants are in cultivating possession of the land in dispute? OPD
3. Whether the plaintiff is entitled to injunction prayed for? OPP

4. Relief.

3. The plaintiff relied upon jamabandis Exhibits P-1 and P-3 and Khasra Girdwaris Exhibits P-2 and P-4 and also produced Chanan Singh, Mohan Singh and Gurcharan Singh as witnesses to establish his possession, whereas defendant-appellants herein, produced Chota Singh, Sukhdev Singh, Ladha Singh, Rajinder Pal and Parminder Singh as DW-1 to DW-5, respectively. It has been held by the learned trial Court that in the jamabandis produced, name of Harijan Cooperative Society Pati Sandhu Barnala is incorporated in the column of ownership, whereas Harnam Singh is shown to be in possession in khasra girdwaris produced and the entries in khasra girdwaris are duly supported by the witnesses produced by the plaintiff. However, the defendant-appellants relied upon the written statement Ex.DW-4/A, alleged to be filed by the plaintiff in an earlier suit admitting the joint possession of the plaintiff and defendants. The learned trial Court placed reliance upon the jamabandis and khasra girdwaris and corroborated statements of the plaintiffs witnesses to hold that the plaintiff is in possession and disbelieved the oral evidence of the defendants and consequently decreed the suit of the plaintiff vide its judgment and decree dated 13.10.1984.

4. The defendants appealed against the aforesaid judgment and decree which also resulted in dismissal by the learned Lower Appellate Court (Additional District Judge, Barnada), vide its judgment and decree dated 13.01.1986. The learned Lower Appellate. Court also refused to rely upon the evidence of the defendant-appellants including the document i.e. certified copy of the written statement, Ex.DW-4/A, on the ground that the same was not been proved in evidence and the same was not even confronted to the plaintiff during his cross-examination.

5. Admittedly, when this appeal was admitted to hearing on 19.05.1986, no substantial question of law was framed as per the then practice in the High Court of Punjab and Haryana. However, when this appeal was taken up for hearing, with the assistance of the learned Counsel for the parties, following substantial question of law has been framed:

Whether a certified copy of the written statement of an earlier suit is per se admissible in evidence or can be proved in evidence by a person other than the author or scribe?

6. The parties have been heard on the above substantial question of law, at length.

7. Learned Counsel appearing for the appellants has referred to and relied upon judgment of the Hon'ble Apex Court in the case of [Bishwanath Prasad and Others Vs. Dwarka Prasad and Others](#), , wherein the following observations have been made:

There is no merit even in the contention that because these three statements-Exs. G., G2 and H- had not been put to the first plaintiff when he was in the witness box or to the eighth defendant although he had discreetly kept away from giving evidence, they cannot be used against him. Counsel drew our attention to Section 145 of the Indian Evidence Act. There is a cardinal distention between a party who is the author of a prior statement

and a witness who is examined and is sought to be discredited by use of his prior statement. In the former case an admission by a party is substantive evidence if it fulfills the requirements of Section 21 of the Evidence Act: in the later case a prior statement is used to discredit the credibility of the witness and does not become substantive evidence. In the former there is no necessary requirement of the statement containing the admission having to be put to the party because it is evidence proprio vigore: in the latter case the Court cannot be invited to disbelieve a witness on the strength of a prior contradictory statement unless it has been put to him, as required by Section 145 of the Evidence Act.

8. There is no quarrel with the aforesaid proposition of law enunciated by the Hon^{ble} Supreme Court. The only question that arises for consideration is whether the document Ex.DW-4/A has been proved in evidence in accordance with the provisions of the Evidence Act or not? An admission of a party, is definitely substantive piece of evidence, but the question is whether such an admission has been established on record or not? In the present case, written statement filed in an earlier case has been allegedly sought to be proved by the Clerk of the Advocate. Only a certified copy of the document was brought on record and the record of an earlier case has not been summoned. Certified copy of only a "public document" is admissible u/s 74 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Act"). Public document has been defined in Section 74 of the Act, which reads as under:

74. Public Documents:

The following documents are public documents:

(1) Documents forming the acts, or records of the acts:

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public offices, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;

(2) Public records kept [in any State] of private documents.

9. Pleadings of a party, does not fall in any of the Public Documents as specified u/s 74 of the Act and, thus, comes within the purview of private document as all documents other than specified in Section 74 of the Act, are private documents. Therefore, certified copy of a written statement allegedly filed by the plaintiff in an earlier suit, is not per se admissible in evidence.

10. The other mode of proving a document is provided under Sections 62 and 64 of the Act where the primary evidence (original document) is available. In absence of original

document, its contents can be proved by leading secondary evidence as defined in Section 63 of the Act by adopting procedure and the manner provided u/s 65 and 66 of the Act. In the present case, the original written statement is part of the earlier suit. The record has not been summoned. Neither author of the written statement who has signed it has been asked to prove it or even the scribe i.e. Advocate who has drafted the same under the instructions, has been produced to prove the contents of the document. To the contrary, the Clerk of the Advocate has been produced allegedly to identify the signatures on the document. By identifying or proving the signatures, the contents of the document are not proved. Admittedly, neither any admission was sought from the plaintiff by confronting the document to him or asking him any question regarding the contents of the document or by inviting interrogatories under Order 11 of the CPC or by seeking admission under Order 12 of the Code of Civil Procedure. Mere fact that a document has been exhibited, does not mean that it is admissible in evidence unless proved in accordance with the provisions of the Evidence Act. Both the learned Courts below have rightly declined to rely on the alleged document i.e. written statement. The ratio of the aforesaid judgment in Biswanath Prasad's case (supra), does not dispense with the requirement of proof in accordance with law. I am in agreement with the opinion of the learned Courts below to the effect that the Clerk of the Advocate cannot prove the contents of the document nor he has proved the contents of the document. Thus, both the learned Courts below have rightly refused to rely upon the document Ex.DW-4/A (written statement). The substantial question of law formulated above, is answered accordingly. There is otherwise concurrent findings of fact recorded by the learned Courts below. The possession of the plaintiff has been proved by both the learned Courts below, No interference is warranted.

11. For the reasons recorded above, I find no merit in the present appeal and the same is hereby dismissed with no order as to cost.