
(1990) 12 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3118 of 1987

Ram Murti Goyal

APPELLANT

Vs

Smt. Basant Kaur and
Others

RESPONDENT

Date of Decision: Dec. 5, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 14, Order 6 Rule 3, Order 6 Rule 4, Order 6 Rule 5

Hon'ble Judges: G.R. Majithia, J

Bench: Single Bench

Judgement

G.R. Majithia, J.

Defendants have come up in regular second appeal against the judgment and decree of the first appellate court affirming on appeal those of the trial Court, whereby the suit of the Plaintiff-Respondents was decreed in respect of Plot No. 118 measuring 222 Sq. Yards comprised in Khasra No. 18//2 situate in Tafazalpura, tehsil and district Patiala.

2. The facts: Babu Singh, predecessor-in-interest of the Plaintiff-Respondents, vide registered sale deed dated February 12, 1970, purchased plot No. 118 measuring 222 Sq. Yards carved out of Khasra No. 18//2 from Bhagat Singh son of Kharak Singh through his General Attorney Ajit Singh son of Gurbax Singh (vendor of Defendants No. 1 and 2). Possession of the plots is claimed to have been delivered pursuant to the sale. It is further stated that Gurbax Singh son of Bhagat Singh sold the plot of land comprised in Khasra No-18//3/2 to Defendants No. 1 and 2 (Appellant No. 1 and Appellants No. 2 to 7 successors-in interest of Sham Lai, Defendant No. 2) vide registered sale-deed dated November 5, 1979. The defedants had taken possession of the plot in dispute since it was lying vacant and had constructed boundary wall on the existing foundation which was filled by Babu Singh, the predecessor-in-interest of the Plaintiffs in 1971.

3. Defendants No. 1 and 2 denied the allegations made in the plaint and pleaded that Bhagat Singh was not the owner of the plot in dispute and the alleged sale deed in favour of the predecessor-in-interest of the plaintiffs was a sham transaction. They validly purchased the plot, which was carved out of Khasra No. 18//3/2, from Gurbax Singh son of Bhagat Singh, for, Rs. 15,000/- and the possession of the said plot was given to them by the vendor. Defendants No. 1 and 2 had spent Rs. 2,000/- and Rs. 6,000/- respectively on the improvements made.

4. Gurbax Singh vendor, was impleaded as Defendant No. 9 in the suit. He reiterated the stand taken by defendants No. 1 and 2 and pleaded that he had sold the plot of land measuring 229 sq yards falling in Khasra No. 18//3/2 to Defendants No. 1 and 2 vide sale deed dated November 5, 1979 for a consideration of Rs. 15,000/- and put them in possession of the same.

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

1. Whether the Plaintiffs purchased the plot in dispute from Bhagat Singh vide Registered sale-deed dated 12.2.70 and entered into its possession? OPP

2. Whether Bhagat Singh had a transferable interest in the plot in dispute? OPP

3. Whether the sale-deed was simply paper transaction as alleged by Defendants Nos. 1 & 2? If so, to what effect? OPD

4. Whether the sale-deed executed by Gurbax Singh in favour of Defendant Nos. 1 & 2 is illegal and void? OPP

5. Whether the suit is within limitation? OPP

6. Whether the suit property valued for the purposes of court-fee and jurisdiction? OPP

7. Whether the suit is not maintainable in the present form? OPD

8. Whether Defendant Nos. 1 & 2 are bonafide purchasers for consideration without any notice of fact entitled in the plot in dispute? OPD

9. Whether Defendant No. 1 has spent Rs. 2000/- and Defendant No. 2 has spent Rs. 6000/- on the improvement in the disputed property? If so, to what effect? OPD

10. Whether the Defendant Nos. 1 and 2 have become the owners of the plot in dispute by adverse possession? OPD

11. Relief.

6. The trial Judge answered issues No. 1 and 2 in favour of the Plaintiffs; issue No. 3 was decided against the Defendants in view of the findings under issue No. 1 and 2; issue No.

4 was decided in favour of the Defendants 1 and 2 and against the Plaintiffs; issue No. 5 was decided against the Defendants; issue No. 6 was answered in favour of the Plaintiffs; issue No. 7 was answered against the Defendants; issue No. 8 was decided against the Defendants holding that the plot purchased by them is not the plot in dispute; issue No. 9 was decided against the Defendants; issue No. 10 was decided in favour of the Plaintiffs and as a result, the suit of the Plaintiffs was decreed.

7. The contesting defedants challenged the judgment and decree of the trial Judge in first appeal before the District Judge, Patiala, which was entrusted to Shri S.S. Chahal, Additional District Judge, Patiala for disposal.

8. The first Appellate Court vide its order dated November 28, 1986, appointed Shri Hardhan Singh, Kanoogo Circle Dakala as Local Commissioner to inspect the spot and after measurement give a report whether the plot in dispute forms part of Khasra No. 18//2. On January 29, 1987, the appointment of Shri Hardhan Singh as Local Commissioner was cancelled and in his place of Shri B.S. Grewal, Naib Tehsildar, Patran was appointed as Local Commissioner for measuring the site in dispute. On April 29, 1987, an application duly supported by an affidavit was moved by Ram Murti Goyal, Appellant No. 1 through his counsel, wherein it was prayed that the appointment of Shri B.S. Grewal as Local Commissioner be cancelled. It was stated therein that the applicant produced a copy of the Aks Latha, Ex. D. 11, before the Local Commissioner, but the latter refused to examine it. The original Aks Latha was not with the Local Commissioner when he visited the spot on April 24, 1987 and that investigation was not possible unless the original Aks Latha was in possession of the Local Commissioner and he had an opportunity to examine it. It was also stated in the application that the original Aks Latha was deliberately withheld or destroyed in the Revenue Office by certain persons in league with the Plaintiffs and the applicant had procured a copy of the Aks Latha when it was produced at the trial as Ex. D. 11 and a copy of the same was sought to be produced before the Local Commissioner, who refused to examine it. This application was not disposed of, although notice of the same was given to the other party and reply thereto was also filed. The Local Commissioner submitted his report on May 8, 1987. On May 21, 1987, Appellant No. 1 filed objections to the Local Commissioner's report, wherein it was stated that when the Local Commissioner carried out demarcation at the spot, he did not have with him the revenue records, namely, Jambandis Field Book, Masavi, Mutations with Tatimas and Aks Latha (map) which has to be the foundation of the measurements and demarcation according to the Punjab Land Revenue Act and the rules framed thereunder and the instructions given in the Punjab and Haryana High Court Rules and Orders, Chapter 1-M, Volume I. The first Appellate Judge adjourned the case on June 1, 1987 for arguments in the main appeal and also on the report of the Local Commissioner to July 28, 1987. The case was adjourned twice, but the interim orders are illegible and there (sic) on August 24, 1987, the appeal was dismissed. The appellate Judge noted the objections of the Appellants' counsel and hastened to dispose of the same with the following observations:

In my opinion, there is no force in the objection raised by learned Counsel for Defendant-Appellant the measurements were taken by the Local Commissioner after giving notice to the parties and in their presence patta dhadhas were established by the Local Commissioner after visiting the spot and thereafter the measurements were taken by him. He has reported that the plot in dispute is a part of K. No. 18/2. There is nothing on the record to disbelieve this report which has been submitted by the Local Commissioner. Thus from the report of the Local Commissioner, there remains no doubt that the plot in dispute is a part of K. No. 18/2, which was purchased by Babu Singh predecessor in interest of the Plaintiffs.

These observations clearly indicate that the appellate Judge did not try to comprehend the detailed objections to the Local Commissioner's report submitted by Appellant No. 1. He also did not advert to the application dated April 29, 1987 submitted by Appellant No. 1, who is an Advocate. It was duly supported by his own affidavit praying that the appointment of Shri B.S. Grewal, Naib Tehsildar Patran as Local Commissioner be cancelled. I have perused the application. Very serious allegations casting doubts about integrity of the Local Commissioner are made therein, which supported by an affidavit of the Advocate and the appellate Judge for no reasons disclosed in the judgment refused to advert to it. To say the least, the first appellate Court which is a final Court of fact is expected to act fairly and decide a point of fact after referring to the relevant evidence produced on the record by the parties to the lis.

9. In the instant case, the only question involved was whether the plot in dispute forms part of Khasra No. 18/3/2 as claimed by the Appellants or Khasra No. 18/2 as projected by the Plaintiffs-Respondents. This could only be resolved after the demarcation of the disputed plot had been carried out in accordance with the existing rules framed by the Court and by the Financial Commissioner (Revenue) under the provisions of the Punjab Revenue Act. Serious objections were taken by Appellant No. 1 to the Local Commissioners' report and also to his personal demeanour. It was stated in the objection petition that the important revenue record which is the basis for carrying out the demarcation was not available with the Local Commissioner when he carried out the demarcation at the spot. It was also stated that the Aks Latha (map), which is the basic document for carrying out the demarcation, was tampered with in connivance with the revenue officials, but the Defendant Appellant No. 1 had obtained a copy of the original Aks Latha, which was produced at the trial as Ex. D-11 and a copy thereof was also produced before the Local Commissioner but he refused to look at it. In view of the serious allegations made in the applications dated April 29, 1987 and May 21, 1987, it was imperative for the appellate Judge to follow the dictum of the Lahore High Court in AIR 1935 501 (Lahore), wherein it was held thus:

It is contended on behalf of the Respondent that there is no provision in the CPC entitling a party, who objects to the report of the Commissioner, to produce evidence in support of his objections. There is no such express provision no doubt, but Order 26, Rule 14 provides that:

The court after hearing any objection which the parties may make to the report of reports, shall confirm, vary or set aside the same. This implies that the parties, are entitled to substantiate their objections but in such cases as a rule of practice the Commissioner should first be examined with reference to the objections, if any, and if it appear from the statement of the Commissioner that there is ground for further enquiry into any matter which is raised in the objections then the parties should be allowed to produce evidence or the Commissioner directed to amend his report accordingly. In my opinion, in the present case the Court should have examined the Commissioner to ascertain from him whether he had excluded from his valuation the improvements, if any, made by the Appellants to the property in dispute. If he had not excluded them, then the Court should have given opportunity to the Appellant to prove that they had made improvement or should have directed the Commissioner to report whether any improvements had been made by the Appellants and to submit a report as to their value

10. Order 26, Rule 14, Code of Civil Procedure, entitled a party to the list to substantiate its objections. The objections filed in the instant case by Defendant/Appellant No. 1 on May 21, 1987 are duly verified by him, who is an Advocate by profession. Reply was filed by the Plaintiffs to these objections. The Plaintiffs did not meet the allegations made in the objection petition. They merely denied the allegations and did not specifically deal with each allegation of fact. If a point of fact is denied it must not be done evasively; otherwise the fact will be deemed to have been admitted, inference can be made to the following observations of their Lordships of the apex Court in the case reported as [Badat and Co. Vs. East India Trading Co.](#), :

Rules 3, 4 and 5 of Order 6 of CPC form an integrated code dealing with the manner in which allegation of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. A written statement must deal specifically with each allegation of fact in the plaint and when the Defendant denies any such fact, he must not do so evasively but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary.

The Plaintiffs accepted the report of the Local Commissioner but objections were filed by defendant Appellant No. 1. Under these circumstances, it would have been apt for the appellate Judge to examine the Local Commissioner with regard to the matter touching his report to elicit the truth. The appellate Judge disposed of the appeal in a most perfunctory manner. The report of the Local Commissioner is set aside in view of the allegations made in the application dated April 29, 1987 and the objection to the report of the Local Commissioner. Since the only point in dispute relates to the demarcation of the plot in dispute and which can only be decided on the basis of the report of the Local Commissioner who has to carry out the demarcation in accordance with the instructions contained in the Punjab and Haryana High Court Rules and Orders, Volume I, referred to in the earlier part of this judgment, I am left with no other alternative but to set aside the judgment and decree of the first appellate Court and to remit the case to the District

Judge, Patiala. He shall appoint a responsible revenue officer/official as Local Commissioner, whose impartiality is beyond doubt, to demarcate the site in dispute and on receipt of the report permit the parties, to take such objections, if any, to the report of the Local Commissioner. Thereafter he shall decide the appeal on merits afresh within six month from the date of receipt of a copy of this judgment Copy of this judgment be supplied to the parties within a week of the applications moved by them in this behalf.