
(2009) 07 P&H CK 0174

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ishwar Chand

APPELLANT

Vs

Municipal Committee

RESPONDENT

Date of Decision: July 8, 2009

Acts Referred:

- Evidence Act, 1872 - Section 101, 110

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

This Regular Second Appeal is directed against judgments and decrees dated 29.11.2001 and 13.5.2003 passed respectively by the Additional Civil Judge (Senior Division), Kurukshetra (hereinafter described as `the trial Court") and the Additional District Judge, Kurukshetra (referred to hereinafter as `the First Appellate Court") whereby the suit and the appeal of the plaintiff-appellant were dismissed.

2. The appellant had filed a suit for permanent injunction against the defendant-respondent on the averments that he had purchased a plot measuring east - west 11-1/4 feet & north-south 79.3 feet vide a registered sale deed dated 17.7.1970; that this plot was now bounded on east; west; north; and south by the properties of Naresh Kumar, Suresh Chand; Harvinder Singh; municipal drain, then kacha road, then pucca road and Arya High School, respectively; that the plot in question is shown in red colour with letters ABCD in the site plan attached with the plaint; that he was in possession of the same since 1950 along with his brother; that they had constructed a room, store, latrine, courtyard etc. therein and also raised a wooden super structure over it about 13-14 years back; that a stationery shop was being run by them from the premises; that a part thereof was also being used for residential purposes; that a paper-cutting machine was in existence in the wooden super structure since it was raised; that the respondent

issued a notice dated 8.4.1988 to the appellant to remove the construction etc. from the site; that a reply to the same was given by him; that the respondent asked him to show the documents regarding ownership of the land in question vide notice dated 21.4.1988, failing which it was mentioned that the construction etc. would be removed; that he filed a reply to this notice as well and sent copies of the sale deed and site plan, upon which the Administrator of the respondent dropped the action on the notice; that after about 10 years, the Administrator of the respondent visited the site and orally directed the appellant to remove his super structure and other belongings within one hour, otherwise the same would be removed forcibly.

3. On the basis of the above averments, the appellant prayed that the respondent and its functionaries be permanently restrained from interfering in his possession over the suit property and from removing the construction etc. therefrom.

4. Upon notice, the respondent put in appearance and filed its written statement contesting the suit. It was pleaded that there was no dispute with the sale deed in favour of the appellant, but the vacant land which is situated near the road is owned by the respondent. It was further pleaded that the out of the said vacant land, some portion has been rented out to various tenants and prior to this, the land in question as well as the land which has been rented out was being used by the public. It was averred that the site plan attached with the plaint and the depiction of the property of the appellant were wrong and that the appellant wanted to grab the property of the respondent where a wooden khokha had been constructed by him illegally. It was pleaded that there was no pucca Nali on the spot.

5. The appellant filed a replication controverting the averments of the respondent and pleaded that the respondent had sanctioned the site plan of the owner in the western side of the land in question in the year 1984-85 and there is also shown its pucca Nali and his property.

6. The parties went to trial on the following issues:

1. Whether the plaintiff is the owner in possession of the suit property, if so, whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

2. Whether the plaintiff has raised construction over the suit property during pendency of the suit, if so what result? OPD

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

4. Whether the plaintiff has no locus standi to file the suit? OPD

5. Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD

6. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties? OPD

7. Whether the plaintiff has concealed the true and material facts, if so, to what effect? OPD

8. Relief. After appraisal of the entire evidence on record, the trial Court dismissed the suit of the appellant.

7. In appeal, the findings recorded by the trial Court were affirmed by the First Appellate Court.

8. This has resulted in the filing of the instant appeal in which learned Counsel for the appellant has contended that the ownership of the appellant was not in dispute nor was his possession and, therefore, the injunction should have been granted to him. He further contended that the evidence on record in the shape of receipts of tehbazari did not prove that the suit property did not belong to him. In this view of the matter, the findings recorded by the Courts below are perverse and are liable to be set aside. It was submitted that since the appellant was in possession of the suit property, it was for the respondent to prove its ownership in view of the provisions of Section 110 of the Indian Evidence Act, 1872 (for short, 'the Act'), according to which, the burden of proving is upon the person, who disputes the ownership of another person, who is in possession of a property. He, thus, contended that since the respondent was disputing the ownership of the appellant over the suit property, it was for them to prove that he was not owner of the property. To support this contention, he placed reliance on *Amrit Lal v. Phool Chand* 1976 P.L.J. 224 (P&H), wherein it was held as under:

From the reading of Section 110 of the Evidence Act, it is clear that when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

9. He further placed reliance on a judgment of the Supreme Court in [Rame Gowda \(D\) by Lrs. Vs. M. Varadappa Naidu \(D\) by Lrs. and Another](#), to contend that if a person is in settled possession of a property, then he cannot be dispossessed without having recourse to the law.

10. On the other hand, learned Counsel for the respondent argued that it was the appellant, who had filed the suit alleging that he was owner in possession of the suit property and, therefore, the burden of proof clearly fell on him to prove his ownership. He further contended that the alleged sale deed in favour of the appellant was merely a sham document and it was between the grand-son and son and there is no evidence to show that the grand-father was ever owner of the property mentioned therein and as to how he acquired the title to it. It was next contended that there is no evidence on record to show that the appellant himself was paying tehbazari and from it, his tenancy can be inferred.

Learned Counsel for the respondent argued that the land in dispute belongs to the respondent and is a public land which cannot be usurped of the appellant. He further argued that notices were issued to the appellant to which he replied, but thereafter he filed the suit and obtained an injunction as a result of which he stalled the proceedings and has also been able to cling on to the possession of the suit land. It was submitted that the land belonging to the public authorities has to be treated differently and unauthorised encroachments should have been discouraged and no injunction should have been granted.

11. I have thoughtfully considered the rival arguments/contentions and have perused the impugned judgments.

12. The dispute centres around only the wooden super structure which , according to the respondent, is on the land belonging to it. The appellant has a sale deed in his favour which was duly proved on record, but the controversy does not pertain to the area which he had purchased. The ambiguity has arisen because of the fact that the sale deed did not provide for the dimensions of the property, but merely describes its location. However, an inference can be drawn against the appellant for the reason that he has stated that he is in possession of the suit property for the last fifty years, but he constructed the wooden khokha about 13 to 14 years back. There is nothing on the record to show that the wooden super structure also belonged to the appellant. In any eventuality, it was for the appellant to prove that he was owner of the area where the wooden super structure has been raised by him. It is he, who has come to the Court with such a plea and the onus was certainly upon him to prove that the area where the wooden super structure exists, was part of the property mentioned in the sale deed and belonged to him. Section 101 of the Act, which, in my opinion, is relevant to the instant case, is reproduced below:

101. Burden of proof.-Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

13. According to the afore-quoted provision of law, a person, who asserts the existence of a fact is required to prove such fact. The burden to prove such fact in the first instance by the person who alleges it, cannot be dispensed with in precedence and in preference to a negative proof of fact.

14. The plea raised before this Court that simply because a person is in possession, would shift the onus of proving the ownership on the other side has to be negated outrightly. Section 110 of the Act does not contemplate such a situation. It is only if such possession is challenged by someone on the basis of his being an owner, that such an onus has to be discharged by him and rightly so because it is he who asserts his

ownership, who has to be prove it. But, in the instant case, it is the appellant who has come to the Court asserting his ownership on the wooden structure and the land on which it was situated. Hence, it was for him to prove in the positive the fact which he asserted and not for the respondent to prove in the negative.

15. The questions of law that arise for consideration of this Court are:

1. Whether the burden of proof as to ownership is upon the person, who asserts that he is owner of anything of which he is shown to be in possession and it lies on the person, who denies the same?

2. Whether in the facts and circumstances of the case, the judgments and decrees of the Courts below are perfectly in order?

3. Whether a person, who pleads a fact as to any legal right, is under an obligation to prove the existence of such fact? In view of the discussion made above, the above questions of law are answered to say that burden to prove the factum of ownership over the suit property was upon the appellant and he had failed to do so and, therefore, the impugned judgments and decrees do not deserve any interference.

16. Consequently, this appeal is dismissed being devoid of any merit.