

Mangal Singh Vs Mam Chand

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 18, 2014

Hon'ble Judges: Ajay Tewari, J

Bench: Single Bench

Advocate: C.B. Goel, Advocate for the Appellant; Aseem Aggarwal, Advocate for the Respondent

Final Decision: Allowed

Judgement

Ajay Tewari, J.

This appeal has been filed by the defendant-appellant against the judgment passed by the learned Appellate Court dated

26.10.1988 reversing the judgment of the learned trial Court.

2. Brief facts of the case are that the plaintiff-respondent had filed a suit for injunction against the appellant claiming ownership and possession over

open piece of land in the abadi deh of Pataudi, Tehsil Pataudi, District Gurgaon. Admittedly, he could not prove the ownership. The trial Court

found inconsistencies in the evidence led by the plaintiff-respondent and dismissed the suit. On appeal the learned lower Appellate Court believed

the evidence led by the plaintiff-respondent and held that there were contradictions in the testimony of the defendant-appellant and consequently

allowed the appeal and decreed the suit. The following questions of law have been proposed by the appellant:-

i) Whether the plaintiff-respondent placed any evidence on the record to prove his possession and ownership in the plot in dispute.

ii) Whether the plaintiff-respondent's suit for permanent injunction is maintainable if the possession is not proved on record and even on the spot.

iii) Whether the defendant-appellant is the owner in possession of the property in dispute for the last 60 years and even today also.

iv) Whether the lower appellate court was justified to reverse the well considered findings of the trial court with the fact that there is no evidence on

record to prove his possession & ownership of the plot.

3. I find that all the questions proposed are pure questions of fact. Even while arguing learned counsel for the appellant has asserted that once the

respondent had failed to prove his ownership the injunction could not have been granted. I am afraid there is no warrant for this proposition of law.

No judgment has been cited in support thereof. He has further argued that even from the site plan placed on record by the respondent it is clear

that the open space which is claimed to be used for tethering of cattle it is not contiguous to the land of the respondent and in these circumstances it

is highly unlikely that he would be tethering his cattle over there.

4. The following question of law is proposed by this Court:-

Whether even if the case of the respondent on fact is accepted its user would still amount to exclusive possession?

5. Learned counsel for the appellant has further argued that mere action of tethering of cattle or storing of cow dung on an open vacant plot cannot

be construed as exclusive possession. In this connection he has relied upon Bhan Singh and Others Vs. Tej Singh and Others, wherein this Court

held so. Learned counsel has relied upon another judgment in the case of Smt. Lila Devi Vs. Devi Ram, However, in that judgment it is seen that

the party had erected a gate and constructed a hutment.

6. In my opinion, the judgment in the case of Bhag Singh (supra) is applicable to the facts of the present case. The said question of law has to be

answered in favour of the appellant.

7. In the circumstances, the appeal is allowed. The judgment of the Lower Appellate Court is set aside and that of the trial Court is upheld.

8. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.