

(2014) 07 P&H CK 0779

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 335 of 1993 (O&M)

Kali Charan

APPELLANT

Vs

Nanak Chand

RESPONDENT

Date of Decision: July 10, 2014

Citation: (2014) 176 PLR 586

Hon'ble Judges: Karam Chand Puri, J

Bench: Single Bench

Advocate: Arvind Seth, Advocate for Deepak Agnihotri, Advocate for the Appellant; Ashok Kumar Jindal, Advocate for Sanjay Mittal, Advocate for the Respondent

Final Decision: Dismissed

Judgement

K.C. Puri, J.

The plaintiff appellant has directed the present regular second appeal against the judgment and decree dated 1.9.1992 passed by Sh. K.C. Gupta, Additional District Judge, Faridabad vide which the appeal filed by the plaintiff was dismissed and the judgment and decree dated 7.12.1991 passed by Mrs. Sneh Prasher, Additional Senior Sub Judge, Faridabad dismissing the suit of the plaintiff was upheld.

2. Briefly stated, the plaintiff filed suit for permanent injunction and pleaded that he was owner in possession of plot No. 1957 measuring 5893.75 sq. feet shown in the letters ABCDEFGH in the site plan situated in Harijan Basti, Old Faridabad. The plaintiff had purchased it from Amar Singh son of Shakru on 25.3.1985 for a consideration of Rs. 15,000/- vide registered sale deed and Amar Singh vendor prior to its sale had got sanctioned site plan from the Faridabad Complex Administration vide order dated 26.11.1984. It was also pleaded that plaintiff had constructed some katcha huts in it and had been using it for piggery purpose and the defendants No. 1 to 6 had got no right or interest in it and that they wanted to grab the portion of his plot shown with letters HIJK in red colour in the site plan in order to raise construction upon it forcibly.

3. On notice, defendants No. 4 to 6 appeared but did not contest the suit.
4. Defendants No. 1 to 3 contested the suit and filed written statement taking preliminary objection of suit being barred by the principle of res-judicata, maintainability. On merits, it was pleaded that plaintiff was not owner in possession of the plot in dispute rather they were owners in possession of the same as it was their ancestral property.
5. The plaintiff filed replication denying the contents of written statement and reiterated the stand taken in the plaint.
6. From the pleadings of the parties, following issues were framed:-
 1. Whether the plaintiff is owner in possession of the plot in dispute, as alleged? OPP
 2. Whether the present suit is barred by the principle of res judicata as alleged? OPD
 3. Whether the suit is not maintainable in the present form? OPD
 4. Whether the plaintiff has no locus-standi to file this suit? OPD
 5. Relief.
7. As stated aforesaid, the suit was dismissed vide judgment and decree dated 7.12.1991 passed by Additional Senior Sub Judge, Faridabad and the appeal filed by the plaintiff was also dismissed vide judgment and decree dated 1.9.1992 passed by Additional District Judge, Faridabad.
8. By filing present regular second appeal, the plaintiff appellant has challenged both the aforesaid judgments and decrees.
9. Learned counsel for the appellant has submitted that plaintiff claimed to be the purchaser of property from Amar Singh but since Amar Singh has not been held to be owner of the property so, the plaintiff does not press the claim regarding his ownership. However, it is submitted that plaintiff is Harijan and he is in possession of the suit property. His possession should be protected. Even, the appellate Court has observed that katcha construction has been raised by the plaintiff for keeping his piggeries so, both the Courts below should have passed decree for injunction against the defendants.
10. Learned counsel for the appellant has further submitted that sanctioned site plan (Ex. P-1) obtained through letter Ex. P-2 has been ignored by both the Courts below and as such the judgments of both the Courts below stand vitiated.
11. Learned counsel for the respondents-defendants has supported the judgments of both the Courts below. It is submitted that findings of both the Courts are that plaintiff is not in possession of the suit property. Even the appellate Court has observed that raising of some katcha construction does not prove the possession of the plaintiff over the land in dispute. Accordingly, the plaintiff has utterly failed to

prove possession over the suit property.

12. I have heard both the sides and have gone through the record of the case.

13. From the submissions made by counsel for the appellant, following substantial question of law has arisen:-

Whether both the Courts below have misread and misinterpreted the evidence on the file and have ignored the site plan Ex. P-1.

14. There is concurrent finding of fact recorded by both the Courts below that plaintiff is neither owner nor in possession of the suit property. The plaintiff while appearing in the witness box has stated that he has constructed manager for piggeries and used to tie his buffalos. He has further stated that his bricks are lying on the spot and earth for construction is there. The first appellate Court has rightly held that such type of statement does not make out a case for possession. Mere placing of bricks or tieing buffaloes does not prove the possession. Even raising kacha manager for pigs also does not prove the possession. There is nothing on the file that both the Courts below have misread and misinterpreted the evidence on the file or the judgments of both the Courts below are against the settled principles of law.

15. So, in view of above concurrent findings of fact recorded by both the Courts below, the points raised stand determined against the appellant. Consequently, the appeal is without merit and the same stands dismissed.