
(1999) 11 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 895 of 1980

Banwari Lal (Died) and Others

APPELLANT

Vs

Ghansham Dass and Others

RESPONDENT

Date of Decision : 19-11-1999

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 2(1)

Citation : (2000) 124 PLR 860

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : R.S. Mittal and Palika Monga, for the Appellant; Chandra Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—This is a defendant's regular second appeal and has been directed against the judgment and decree dated 15.10.1979 passed by the Senior Sub Judge exercising enhanced appellate powers, Bhiwani, who affirmed the judgment and decree of the trial Court dated 9.12.1976 vide which the suit of the plaintiffs Balla Ram and Moti Ram was decreed.

2. The brief facts of the case can be summarised in the following manner: -

3. The plaintiffs alleged that they are the owners of a residential plot measuring 1925 sq. ft. shown by the words BGPE in the site plan attached with the plaint, Ex.P-1, as this plot was allotted to them by the Custodian. It was alleged that about 7/8 years prior to the institution of the suit, the defendant Banwari Lal took forcible possession of the part of plot as shown by the words AEFgcd in the site plan Ex.P-1. Defendant Banwari Lal had no right, title or interest in the property. He was requested to vacate the possession of the area measuring 1245 sq. ft. but to no effect. Hence the suit.

4. The suit was contested by the defendant on the plea that the plaintiffs are not the owners of the property in dispute and this property was not an evacuee

property nor it was declared as such by the Govt. of India. It was further submitted by the defendant that he was in possession of the property in dispute since the time of his ancestors and that he had also become the owner of the property in dispute by adverse possession. The defendant and his brothers had constructed a house on the plot after spending a sum of Rs. 12,000/-. It was further pleaded that the plaintiffs had no locus standi or cause of action to file the suit; that the suit was time barred; that the same is not properly valued for the purposes of court fee; that the correct site plan of the property in dispute has not been enclosed with the plaint; that the previous kutchha building was got demolished in the year 1960 and thereafter a pucca building was got constructed on the property in dispute and the plaintiffs had been seeing this construction being carried out by the defendant. So, the plaintiffs are estopped from filing the suit on account of their own acts and conduct.

5. On the pleadings of the parties, the trial Court framed the following issues:-

"1. Whether the plaintiffs are the owners of the site shown as BCEF in the site plan? OPP

2. Whether the defendant has illegally occupied the site shown as AEFgcd in the site plan for the last 7/8 years? OPP

3. Whether the suit is within time? OPP

4. Whether the suit is properly valued for the purposes of Court fee? OPP

5. Whether the plaintiffs have no locus standi to sue? OPD

6. Whether Sadhu and Harsarup are necessary parties to the suit? If so to what effect? OPD

6-A. Whether the property in dispute was never declared as an evacuee property as alleged in para No. 1 of the written statement?

6-B. Whether the defendant has become owner by adverse possession?

6-C. Whether the plaintiffs are estopped by their acts and conduct to file the present suit?

6-D. Whether the suit is not maintainable in the present form?

6-E. Whether the defendant has taken up the pleas not allowed by the Appellate Court?-

6-F. Whether the written statement is not properly verified?

6. The parties led oral and documentary evidence in support of their case and on the conclusion of the proceedings, issues No. 1 and 5 were decided in favour of the plaintiffs. Issues No. 6, 6A, 6B, 6C, 6D, 6E and 6F were decided against the defendant and, finally, the suit of the plaintiffs was decreed.

7. Aggrieved by the judgment and decree of the trial Court, the defendant-

appellant filed the first appeal before the first appellate Court who vide judgment dated 15.10.1979 dismissed the appeal and aggrieved by the judgment and decree of the first appellate Court, the present appeal.

8. I have heard Mr. R.S. Mittal, Sr. Advocate with Ms. Palika Monga, Advocate, for the appellant and Mr. Chandra Singh, Advocate, for Rs. 1 to 5, and with their assistance have gone through the record of this case.

9. The findings of the Courts below on issues No. 1 and 2 were mainly attacked by the counsel for the appellant on the ground that the plaintiffs or their successors in interest have not been able to prove the identity of the property in dispute. The learned counsel for the appellant submitted that, admittedly, the property in dispute including the other area measuring 1925 sq. ft. was allotted to the plaintiffs vide Sanad dated 30.11.1979. In the said Sanad, the boundaries of the plot have not been mentioned. Only the measurements have been written which indicate the plot measuring 1925 sq. ft. had the following measurements:-

On East and West : 35 ft. each On North and South : 55 ft. each.

and in the absence of the proper proof of the identity of the property, the suit of the plaintiffs could not be decreed.

10. I do not subscribe to the argument of the learned counsel for the appellant. It is true that in the Sanad, Ex.P-2, the boundaries are not mentioned nor any site plan has been marked but in order to affix the identity of the property, the plaintiff examined the Patwari of the Custodian Department. He appeared as PW-4 and proved the site plan Ex. PX. It would show that on the eastern side of the plot which was sold to the plaintiffs there was a public passage and on the western side there was Shamlat. On the northern side, there was a public passage and on the southern side there was a house of Sanwal, Lambardar. The measurements of the site plan, Ex.PX, fully tally with the measurements mentioned in Ex.P-2. Thus, the identity of the property which was sold to the plaintiffs stands fully established by taking note of this documentary evidence.

11. Now, it is to be seen whether the defendant had encroached the part of this area which was sold to the plaintiffs or it was some other area. In this regard, again, reliance can be placed on the site plan, Ex.D-1, which was produced by the defendant which also shows that on the southern side of the property in dispute is a house of Sanwal, Lambardar and on the eastern and western sides, there are public passage. Further on the west Of the plot, the house of one Sri Chand has also been shown. If the boundaries mentioned in Ex.D-1 are compared with the boundaries of Ex.PX, it would show that on three sides, the boundaries tally. In such a situation, it is very easy for this court to hold that the encroached area formed part of the larger area measuring 1925 sq. ft., which was allotted and purchased by the plaintiffs. Since, the defendant has not been able, to prove any right, title or interest in the plaint which was sold by the Custodian to the plaintiffs, therefore, their possession with regard to the encroached area as claimed by the plaintiffs has to be held to be illegal and

unauthorised.

12. Faced with this difficulty, the learned counsel for the appellant, then, submitted that it is not proved on the record that the area which was sold to the plaintiffs was an evacuee property or that it was ever occupied by the Mohammedans or that it was ever declared by the Govt. of India as an evacuee property.

13. The argument is too feeble to be accepted. This point cannot be adjudicated by a civil Court in view of settled principles of law as reported in *Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum*, . If this property had been declared as evacuee property in an illegal manner, as stated by the counsel for the appellant, then, the defendant ought to have raised this point before the Re-habilitation authorities who alone were competent to decide whether the defendant had any right, title or interest in the property or not. The stand of the defendant in the trial Court was that the area in dispute was being held by him since the time of his forefathers and he had become the owner of the property by virtue of adverse possession. He has not been able to prove to the effect that he either approached the Re-habilitation authorities in this regard and, in these circumstances, it is difficult for me to accept that the property in dispute was not an evacuee property or that it could not be rightfully sold to the plaintiff. The sale of the property in question to the plaintiffs vide Sanad, Ex.P-2, itself is suggestive of the fact that the property was an evacuee property and to that extent even the Patwari of the Re-habilitation Department had proved this fact. Even if it is assumed for the sake of arguments by accepting the submissions of Mani Ram, DW-2 Banwari, defendant, who appeared as DW-4 and Chandi Ram, RDW-1, that the defendant was in possession of the property for the last several years still, there is no evidence to suggest that the possession of the defendant became adverse against the Mohammedan owners or after their migration against the Department.

14. On the contrary, Raghbir Singh, Patwari, clearly stated that the site plan of the site in question was prepared in the year 1959 and Banwari, defendant, was in illegal possession of the same and his possession was for the last 10 years prior to 1959. The plaintiffs had come on the basis of title. The plot was purchased, by them on 30.11.1959 and they could easily file the suit within 12 years from the date when the defendant alleged title adverse to the interest of the plaintiffs. The present suit was instituted on 17.2.1971 and, therefore, it has to be held to be within limitation. Even if it is assumed for the sake of arguments that the defendant is in possession of the property since 1949, the Sanad, Ex.P2, in favour of the plaintiffs shows that the property in dispute had been notified u/s 12(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, as per notification dated 12.7.1955. The property vests in the Govt. of India free from all encumbrances. Meaning thereby, the start of the adverse possession, if any, in favour of the defendant had started in the year 1949 and ended in the year 1955 itself or at the most on 30.11.1959 when the Sanad was issued in

favour of the plaintiffs.

15. It was, then, submitted by the counsel for the appellants that the defendants had constructed a house over the site in dispute in the knowledge of the plaintiffs and at no point of time, it was, ever objected to and, in these circumstances, the decree for possession cannot be granted to the plaintiffs and at the most the plaintiffs can be called upon to take the price of the site over which the constructions of the defendant has been made.

16. The argument is not acceptable to the court. The defendant had no right, title or interest in the property in dispute. His possession was unauthorised right from the very beginning. The defendant, in these circumstances, cannot be allowed to perpetuate his illegal design and illegal possession by raising construction on the land of which they are not the owners. He has to vacate the property over which this possession is held to be illegal and not adverse, I have already held above that the suit of the plaintiffs was within limitation.

17. No other point was urged before me.

18. In these circumstances, there is no merit in this appeal and the same is hereby dismissed.