
(2012) 02 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1623 of 1989 (O and M)

Dalip Singh and Others

APPELLANT

Vs

Hans Raj and Another

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Citation : (2012) 02 P&H CK 0087

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The defendants-appellants are in second appeal before this Court.

2. Hans Raj, plaintiff filed a suit for a decree for possession of property No. B-VIII-18 measuring 329 sq. yards situated at Meham being fully detailed in the site plan attached with the plaint. It was pleaded that property No. B-VIII-18 measuring 329 sq. yards was put to auction on 5.6.1979 and the plaintiff being the highest bidder of Rs. 1250/-, the bid was confirmed in his favour on 28.6.1979. As provided under the Displaced Persons Compensation Rules a conveyance deed was also issued to the plaintiff on 1.6.1982 and the same was registered on 8.9.1982. It was further pleaded that the property purchased by the plaintiff consisted of a room on the Northern side as also a room on the Southern side. The defendants forcefully and illegally entered the property and demolished the room on the Southern side which was adjacent to a Gali. It was stated that such portion now stood occupied by Sadhu Ram, defendant No. 2 and such defendant had also constructed a room with the malba of the demolished room and kitchen as reflected in the red colour in the site plan. Defendant No. 4 was stated to be in possession of a room and kitchen and defendant No. 3 was stated to be in possession of the original existing room on the Northern side of the property. It was pleaded that the plaintiff had on a number of occasions objected to the illegal occupation of his property at the hands of the defendants.

However, since the defendants had failed to deliver the possession of the suit property to the plaintiff as such the decree for possession had been prayed for.

3. The defendants upon notice contested the suit and filed separate written statements. Defendants No. 1 and 2 denied that the suit property had even been auctioned by the Custodian Department. It was pleaded that the property No. B-VIII-19 had been put to auction by the Custodian Department in the year 1958 and the same had been purchased by Matu Ram i.e. the father of defendants No. 1 and 2 in an open auction. A sale certificate had also been issued in respect thereof. Defendants No. 3 and 4 also denied the averments made in the plaint and claimed that they are in possession of the suit property as owners. Defendants No. 3 and 4 asserted that they had raised construction over the property more than 25 years back and upon such pleadings it was prayed that the suit be dismissed.

4. From the pleadings of the parties, following issues were struck:-

1. Whether the plaintiff purchased the property in suit in open auction which was confirmed on 28.6.79? OPP

2. Whether the defendants have forcibly occupied any part of the property and had demolished a room on the southern side abutting the gali as alleged? OPP.

3. Whether the plaintiff is entitled to relief claimed? OPP

4. Whether the boundaries of the property as disclosed in

the plan are factually wrong as alleged and if so to what effect? OPD3-4.

5. Whether defendants No. 3 and 4 are in possession of the property as owners in their own right? OPD-3.

6. Whether the plaintiff has no locus standi? OPD 3-4.

7. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD.

8. Whether the suit is bad for misjoinder of parties and of cause of action? OPD.

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

10. Whether the suit is false and vexatious and the defendants are entitled to special costs? OPD.

11. Whether this court lacks jurisdiction to entertain and adjudicate upon the matter? OPD.

12. Whether a common suit against all the defendants is not maintainable? OPD 1-2.

13. Relief.

5. The suit of the plaintiff was decreed by the Trial Court as regards possession of

property bearing No. B-VIII-18 measuring 329 sq. yards situated at Meham. Defendants-appellants preferred a civil appeal and vide judgment dated 16.1.1989 the judgment of the Trial Court has been upheld and the appeal has been dismissed. Resultantly, the defendants-appellants are in second appeal before this Court.

6. I have heard respective counsel for the parties and have perused the case file minutely.

7. The courts below have conclusively held that the defendants-appellants have no concern whatsoever with the suit property bearing No. B-VIII-18 which has been proved to have been purchased in public auction by the plaintiffs-respondents from the Custodian Department. Such fact stands proved from the sale certificate Ex.P-1. On the other hand the conveyance deed Ex.D-1 issued on 17.7.1958 reflected the sale of property No. B-VIII-19 in favour of Matu Ram. Sale certificate Ex.D1/1 issued on 1.10.1958 would reflect the sale of property bearing No. B-VIII-20 in favour of Mai Dal i.e. father of defendants No. 3 and 4. The findings on fact that have been returned by both the courts below are that defendants No. 1 and 2 are owners of property No. B-VIII-19 and defendants No. 3 and 4 are owners of property No. B-VIII-20, whereas the plaintiff-respondent is the owner of property No. B-VIII-18. Site plan Ex.P-2 proved by Sh. Kewal Krishan, Kanungo would show property No. B-VIII-19 towards East of property No. B-VIII-18 and the dimension of property No. B-VIII-18 is shown as 81 feet 9 inches North-South and 23 feet 3 inches East-West. No evidence has been led to show that such site plan was not issued by the Custodian Department from its own record. The defendants-appellants also did not make any attempt to bring on record any other side plan from the record of the Custodian Department to show the respective locations of plots No. 18, 19 and 20. Defendants No. 1 and 2 themselves had stated that they were in possession of property No. 19 and not in possession of property No. 18. Likewise, defendants No. 3 and 4 have stated to be in possession of property purchased vide sale certificate Ex.D1/1 and such property bears No. 20. In the testimony of DW-4, Shishpal, there was a clear admission in the cross-examination that neither he nor his father had ever purchased property No. 18. Based on the site plan Ex.P-5 both the courts below have held the defendants-appellants to have encroached upon property No. 18 i.e. the one owned by plaintiff-respondent. On such cogent reasoning and due appreciation of evidence led on record the defendants-appellants have been held to be in illegal possession of the property in dispute bearing No. 18, which is under the ownership of the plaintiff-respondent.

8. I find no basis whatsoever to interfere with the impugned judgment and decree. The findings of the courts below are based on due appreciation of evidence and I do not find the same to be perverse.

9. No question of law much less substantial question of law arises for determination in this second appeal.

10. The appeal is, accordingly, dismissed.

Appeal dismissed.