
(1997) 07 P&H CK 0182

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 707 of 1980

Dalip Singh and Others

APPELLANT

Vs

Nazar Khan and Others

RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:

Citation : (1998) 1 CivCC 591 : (1998) 118 PLR 241 : (1997) 4 RCR(Civil) 387 : (1998) 2 RCR(Civil) 81

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This is defendants' second appeal directed against the judgment of the Courts below whereby suit of the plaintiff for possession has been decreed.

2. Plaintiff-Nazar Khan filed suit for possession of evacuee Plot No. 6 measuring 1426 Sq. Ft. in village Narike Kalan, Tehsil Malerkotla District Sangrur. As per averments made in the plaint, plaintiff had purchased Plot No. 6 vide sanad dated 27.4.1965 issued by Tehsildar Sales-cum-Managing Officer, Sangrur. He alleged that the defendants had made unauthorised structures on the evacuee Plot No. 6 and they be directed to remove the unauthorised construction. Injunction was also prayed for restraining the defendants from interfering in the possession of the plaintiff after removal of the structures.- Defendants, in the written statement, submitted that the plaintiff is in possession of two evacuee houses along with his father-in-law, Gehna brother-in-law, Sher Singh and others to which sale certificate set up by the plaintiff relates. Defendants further submitted that the plot in their possession originally belonged to the Muslims who had migrated to Pakistan. Subsequently, plot was allotted to Buta Singh son of Santa Singh vide sanad permanent Allotment Nos. S-III-19 (44 55N dated 12.7.1955). After the allotment, defendants Sarja Singh and Dalip Singh continued in its possession as licensees of said Buta Singh. Vide sale deed dated 19.6.1959 Buta Singh sold the plot to Sarja Singh and Dalip Singh-defendants.

3. From the pleadings of the parties, the following issues were framed by the trial Court :-

(1) Whether the plaintiff is owner of the site in dispute? O.P.P.

(2) Whether the property in dispute is not covered by a sale certificate dated 27.4.1965 issued to the plaintiff? O.P.D.

(3) Whether the plaintiff is estopped to file this suit by his own act and conduct? O.P.D.

(4) Whether the plaintiff is entitled to the injunction prayed for? O.P.D.

(5) Relief.

4. During the pendency of the suit, trial Court, on finding that there were three evacuee houses No. 4, 5 and 6. One in dispute was allotted to Buta Singh and later sold to defendants vide sale deed dated 19.6.1959. The other two houses were purchased by the plaintiff vide Sale Certificate dated 27.4.1965. Since the sale certificate relied upon by the plaintiff contained no boundaries of the two houses and one house allotted to Buta Singh and sold in favour of Sarja Singh and Dalip Singh described boundaries. Trial Court, in order to determine the actual position at the spot, appointed a Local Commissioner to know the areas of the plots along with constructions made thereon. Shri Gopal Krishan, Advocate, who had been appointed the Local Commissioner, measured the area of each house mentioned in the sale certificate with the help of draftsman. In his report, he submitted that the area of the plots which are in possession of Nazar Khan-plaintiff, is 1334 Sq. Ft. whereas plots in possession of defendants-Dalip Singh and Sarja Singh were found to be measuring 1500 Sq. Ft. Along with the report, he submitted the plan which he had prepared with the help of the draftsman. Trial Court, on the basis of the report of the Local Commissioner, Sanad and the entries from the Shikni Register pertaining to village, found that there were three plots; one belonging to Walia which was No. 4 measuring 1025 Sq. Ft., No. 5 belonging to Walaiti Lohar measuring 494 Sq. Ft., whereas Plot No. 6 belonging to Walaiti Lohar measured 1429 Sq. Ft. He also found that the plaintiff purchased two plots and Sanad in that regard Was issued to him. Plot No. 5 was purchased by Buta Singh in public auction which measured 494 Sq. Ft. and subsequently plot belonging for Buta Singh was purchased by the two defendants vide sale deed Exh. D.1. On the basis of this evidence, plaintiff was held to be not in possession in Plot No. 6 but since the defendants were found to be in illegal possession of an area measuring 1006 Sq. Ft forming part of Plot Nos.4 and 6, the trial Court decreed the suit in favour of the plaintiff for possession to the extent of 1006 Sq. Ft. Two appeals were preferred. One by the plaintiff and the other by the defendants. Appeal of the defendants was dismissed whereas the appeal of the plaintiff was allowed. The first Appellate, Court decreed the suit in entirety meaning thereby that suit for recovery of possession of land measuring 1426 Sq. Ft. was decreed. This second appeal is by the defendants against the judgment and decree of the Courts below.

5. In this second appeal, it has been contended by the counsel for the appellant that the sale certificate relied upon by the plaintiff relates to two houses and there were no boundaries. He submitted that the plaintiff is in possession of two houses whereas the defendants have been found to be in possession of one house. He contended that where there is a dispute regarding the identity of the land sold, the normal rule is that description by boundaries is to be preferred to a conflicting description by area. Against this, the learned counsel for the plaintiff has contended that the defendants purchased plot measuring 494. Sq. Ft. from Buta Singh and the area of Plot No. 6 for which suit was filed, measures 1426 Sq. Ft. whereas they have been found to be in possession of 1500 Sq. Ft. He thus contended that the area in possession of the defendants is almost the same for which suit was filed and so suit has rightly been decreed by the first Appellate Court.

6. On going through the record and after hearing the learned counsel for the parties, I am of the view that the appeal deserves to succeed. The first Appellate Court while decreeing the suit in entirety, has failed to notice that it is the admitted case of the parties that there were three houses, namely, Nos. 4, 5 and 6. Out of three houses, two were purchased by the plaintiff and the third was allotted to Buta Singh from whom the defendants purchased the same. This fact is further corroborated from the entries in the Khasra Shikni. The first Appellate Court has not disputed the allotment made to Buta Singh from whom defendants had purchased the same, yet has gone wrong in saying that the defendants should file separate suit for possession of plot which they had purchased from Buta Singh. Admittedly, the sale certificate relied upon by the plaintiff contained no boundaries and it was only in order to determine the actual area on the spot that a Local Commissioner had been appointed. The Local Commissioner, in his report found that defendants had purchased plot measuring 494 Sq. Ft. from Buta Singh and he was found to be in possession of 1006 Sq. Ft. in excess and suit for this area was decreed against him. In my view, in absence of any boundaries given in the sale certificate relied upon by the plaintiff and sale in favour of defendants being not denied, the approach of the trial Court in decreeing the suit to the extent of area found in excess with the defendants was correct and no interference was called for. Defendants cannot be made to vacate the entire area in their possession and driven to file separate suit for possession of the plot which they had purchased from Buta Singh.

7. Consequently, the judgment of the first Appellate Court cannot be sustained. Resultantly, this second appeal is allowed, the judgment of the learned Additional District Judge is set aside and that of the trial Court is restored with no order as to costs.