
(2015) 02 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 5372 of 2003

Gurdwara Mazbhi Sikhan Sahib and Others	APPELLANT
Vs	
Darshan Singh and Others	RESPONDENT

Date of Decision : 21-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 20

Citation : (2015) 02 P&H CK 0088

Hon'ble Judges : Bharat Bhushan Parsoon, J.

Bench : Single Bench

Advocate : Malkeet Singh, for the Appellant; R.S. Chauhan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Bharat Bhushan Parsoon, J.—Plaintiff Darshan Singh, respondent No. 1 herein, had filed a suit against Gurbax Singh and others including Gurdwara Mazbhi Sikhan Sahib Baba Charan Singh Jeet, appellants herein, for seeking a decree of permanent injunction restraining the defendants from interfering in the possession of the suit property. In the alternative, possession of the suit property was also sought claiming himself to be owner of the property.

2. Claim of the plaintiff, respondent herein, was based on succession. It was claimed that Bhola Singh @ Barola Singh, father of respondent-plaintiff died in the year 1942 leaving behind the respondent plaintiff and his two other brothers, namely, Jagat Singh and Hari Singh. It was ancestral property and was inherited by the respondent-plaintiff and his two brothers in equal shares. His brothers Hari Singh and Jagat Singh mortgaged their 1/3rd share each with possession of the suit property to Smt. Basant Kaur wife of Kehar Singh of village Ramgarh vide two mortgage deeds dated 30.7.1955. Said Smt. Basant Kaur sold her mortgagee rights to the respondent-plaintiff vide two sale deeds dated 4.8.1955. Sequel, on 4.8.1955, the respondent-plaintiff became mortgagee with possession of 2/3rd share, whereas he was already owner in possession of 1/3rd

share. Since Hari Singh and Jagat Singh could not get their share of the property redeemed from Smt. Basant Kaur, the respondent-plaintiff became owner of their share as well and thus, became exclusive owner in possession of the suit property. The respondent-plaintiff had started residing at Ludhiana. When he came in village Ramgarh and went to the site of property, he found the same in a dilapidated condition.

3. The respondent-plaintiff had alleged in the suit that the defendants were high-headed persons and they tried and threatened to dispossess him from the suit property illegally and forcibly. The plaintiff also got the photographs of the suit property. It was further explained by the plaintiff that the suit property was originally owned and possessed alongwith the property located on its northern side by his late great grandfather, namely, Charan Singh, who had constructed a private Gurdwara on the northern side of the property in dispute. After the death of Charan Singh, his son Gurdit Singh became owner of the suit property and after the death of said Gurdit Singh, Bhola Singh @ Barola Singh, his father, in the circumstances already detailed earlier in the judgment, became the owner in possession of the suit property.

4. The suit was contested tooth and nail by the defendants including Gurdwara Mazbhi Sikhan Sahib Baba Charan Singh Jeet, now appellant. The entire case of the respondent-plaintiff was denied. Existence of Gurdwara Mazbhi Sikhan Sahib was alleged but it was claimed that the same was not called Gurdwara Mazbhi Sikhan Sahib Baba Charan Singh Jeet. It was explained further that the suit property is located in Khasra No. 491 (1 Kanal 3 Marlas) as per Jamabandi for the year 1992-93. It was claimed that there was no residential house in the suit property but there was Gurdwara Sahib with Bathrooms and rest of the land was lying vacant. It was also claimed that Raja, defendant No. 2 and appellant No. 2 herein, was President of the Prabandhak Committee of the said Gurdwara whereas remaining defendants including appellants No. 3 and 4 as also rest of the defendants were members of the Prabandhak Committee. Dismissal of the suit was sought.

5. Rival claims of the parties in the pleadings on record were sought to be adjudicated by the lower court by framing the following issues on 25.2.1995:

1. Whether the plaintiff is in possession of the suit property? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPD
6. Relief.

6. The following additional issues were also framed by the lower court:

2-A. Whether in the alternative, the plaintiff is entitled to possession of the suit property as owner of the land and on the basis of his previous possession? OPP

2-B. Whether the plaintiff is entitled to declaration as prayed for? OPP

2-C. Whether the site plan produced by the plaintiff is correct? OPP

7. After receiving oral as well as documentary evidence from the parties and providing a hearing to their respective counsel, deciding issues No. 1, 2, 2-A, 2-B and 2-C against the respondent-plaintiff, the suit of the plaintiff was dismissed with costs by the lower court vide judgment and decree dated 5.2.2002.

8. In first appeal preferred by the plaintiff, re-appreciating the oral as well as documentary evidence in the light of assertions of claim of ownership and possession by the appellant, the appellate court had come to a definite finding that the plaintiff, appellant before the said court and respondent herein, was in possession of the suit property as owner and during the pendency of the suit, the defendants had taken forcible and illegal possession. Later on, the suit was amended and relief of possession was also added.

9. Reversing the findings of the lower court on issues No. 1, 2, 2-A, 2-B and 2-C and deciding the same in favour of the appellant-plaintiff, respondent herein, accepting his appeal while setting aside the judgment and decree of 5.2.2002 of the lower court, the suit was decreed in his favour declaring him owner of the suit property. The decree for possession was also passed by the appellate court vide judgment and decree dated 20.5.2003.

10. In this regular second appeal preferred by appellant Gurdwara Mazbhi Sikhan Sahib and three others, plaintiff Darshan Singh was impleaded as respondent No. 1, whereas sons of Gurbax Singh, defendant No. 1, were impleaded as respondents No. 2 to 4 and his daughters were impleaded as respondents No. 5 and 6. Similarly, respondents No. 7 to 9 in this appeal are legal heirs of Bakshish Singh, defendant No. 5 in the suit. Defendant No. 6 Jeet Ram was impleaded as respondent No. 10. Service of respondents No. 2, 4 to 6 as also 8 to 10 was dispensed with vide order dated 7.2.2006 of this Court.

11. While admitting this appeal for hearing on 12.2.2004, execution of the decree under appeal was stayed during pendency of this appeal. Some of the appellants were being represented and were contesting the appeal. Service of rest of the respondents was ordered to be made by substituted mode i.e. by way of publication vide order dated 4.10.2002. Even otherwise, rest of the respondents are proforma. The appellants and contesting respondents are duly represented by their counsel.

12. Following substantial questions of law arise for determination by this Court:

(i) Whether the judgment and decree passed by the learned appellate court by misreading, misinterpreting, misconstruing the documentary as well as oral evidence available on the record is legally sustainable?

(ii) Whether the learned lower appellate court was competent to reverse the judgment and decree passed by the learned trial court without re-appreciating and re-appraisal of the evidence only on the ground that respondent/defendants were proceeded against ex parte?

(iii) Whether the plaintiff can succeed on issues the onus of proof of which is to be discharged by the plaintiff on the weakness of the defendants?

(iv) Whether the learned appellate court can dispense with the personal service of the respondents in appeal and resort to service through publication only on the ground that there were large number of respondents?

13. Counsel for the appellants has urged that respondent No. 1 has nothing to do with the property in dispute. Referring to order dated 8.11.2005 of this Court, it is claimed that father of respondent No. 1 was only a Granthi of the appellant Gurdwara. It is claimed that the first appellate court went far and beyond the evidence on record and committed a grave error in reversing the findings of the lower court on issues No. 1, 2, 2-A, 2-B and 2-C.

14. Counsel for the respondent-plaintiff, on the other hand, has urged that a fool proof case of his ownership and possession right from the time of his great grandfather, is made out. It is contended that during pendency of the suit, he was dispossessed by the appellants forcibly and illegally and there is enough evidence to sustain the high-handedness of the appellants against the respondent-plaintiff. Validity and legality of the impugned judgment and decree dated 20.5.2003 of the first appellate court is asserted.

15. Perusal of the pleadings of the parties leaves no manner of doubt that existence of Gurdwara on the northern side of the property in dispute shown in red colour in the site plan (Ex.P1) is admitted by the respondent-plaintiff right from the very start. Even when the defendants in their pleadings have denied the correctness of site plan (Ex.P1) of the respondent-plaintiff, they have conceded that on the northern side of the property, Gurdwara Sahib is located. When comparison of the boundaries given by the respondent-plaintiff and by the defendants in their pleadings, as also in site plans Ex.P1 of the plaintiff and Ex.DW1/A of the defendants, is made, there is hardly any difference of the boundaries of the property in dispute. Both the parties mention existence of street, house of Bhajan Singh and house of Chanan Singh on the western side. Both the parties concede that there is a Rasta on the eastern side. On northern side, property of Gurdwara is described. Even on the southern side, house of Pritam Dass etc. is conceded by both the rival claimants. It, thus, remains a fact that location of the property no more remains disputed. It is very well identified. The dispute is only with regard to the extent of property of Gurdwara which is located in north of the property in dispute.

16. It is worth notice that during pendency of the suit, on the application for amendment in the plaint, the plaint was amended by the respondent-plaintiff and decree of possession was also sought claiming that in his absence, the

defendants had constructed a Chabutra and had installed a hand-pump and had also paved fresh flooring extending the domain and sweep of the property of Gurdwara. It is worth notice that when amended written statement was furnished by the defendants, no specific denial of the newly added pleas of the plaintiff was made.

17. When pleadings of the parties are juxtaposed and are read together, there is no specific denial that the plaintiff is son of Bhola Singh @ Barola who in turn was son of Gurdit Singh. There is no denial that the plaintiff had his brothers Jagat Singh and Hari Singh. The case of the respondent-plaintiff is fully established from mortgage-deeds Ex.P14 and Ex.P15 whereby Jagat Singh and Hari Singh, brothers of the respondent plaintiff had mortgaged their 2/3rd share in the property in dispute with possession thereof on 30.7.1955.

18. When these mortgage deeds of yester years, when there was no litigation of the parties, are read in relation to each other, there does not remain any dispute about the identity of the property in dispute and it is clearly mentioned that Gurdwara Mazbhi Sikhan Sahib was located on the northern side of the property. Sale deeds Ex.P16 and Ex.P17 of 4.8.1958 further sustain the case of the respondent-plaintiff showing that Smt. Basant Kaur, the mortgagee in possession, had sold her mortgage rights in 2/3rd share of the property in dispute, to the plaintiff. The two mortgagees vide mortgage deeds Ex.P14 and Ex.P15 were never redeemed by the mortgagors Jagat Singh and Hari Singh and thus, by efflux of time, the respondent plaintiff had become owner of 2/3rd share of the property hitherto held by Jagat Singh and Hari Singh, his brothers. This evidence also supports claim of the respondent-plaintiff that he was already owner of 1/3rd share in the suit property and sequently had become absolute owner in possession of the property in dispute.

19. There is yet another document of yester years i.e. sale deed executed by one Shyam in favour of Bhagat Ram on 8.1.1971 which clearly shows that on the eastern and southern sides of the house purchased by Bhagat Ram from Shyam, there is a house of Barola Singh and on the western side, there is a house of Pritu and on the northern side, there is a Rasta. It, thus, clearly emerges that this property purchased by Bhagat Ram is in the immediate vicinity of the property in dispute.

20. There is yet another piece of evidence of immutable character. Photographs Ex.P2 to Ex.P6 leave no manner of doubt that the suit property is an old constructed and at that time was lying in a dilapidated condition. Though foundation and portion of walls thereof were visible to prove that at one point of time, rooms had existed there, it is also noticeable that neither Nishan Sahib nor any hand-pump was then existing at the spot. Later photographs are Ex.P19 and Ex.P22 which clearly show that construction of the flooring as also of Chabutra and installation of Nishan Sahib, was done later and these are fresh additions in the property in dispute.

21. There is yet another piece of evidence of ancient times in the nature of record of earlier litigation which was contested between Gram Panchayat, Ramgarh and Gurdev Ram. House of Hari Singh, brother of the plaintiff who had mortgaged his share to Smt. Basant Kaur is shown to be located adjacent to the house of Chanan Singh on the eastern side of the property in dispute.

22. Even when the revenue record of yester years is perused, the case of the respondent-plaintiff clearly emerges to be genuine and truthful. In Jamabandi for the year 1917-18 (Ex.P29) in column No. 4, there is mention of Mazbhi Sikhan Ramgarh Malik Kabza Hissedaran Shamlat. Out of the total land, 1 Kanal 3 Marlas land is shown as Banjar Kadim, whereas remaining land is shown as Gair Mumkin Chaha Abnoshi Kotha Abadi. There is no mention of existence of any Gurdwara. It is not denied that the plaintiff is a Mazbhi Sikh. Certificate Ex.P29 also supports and sustains the claim of the respondent-plaintiff on this count. Even copy of mutation Ex.P30 of 4.9.1951 whereby the land measuring 1 Kanal 12 Marlas in Khasra No. 803 shown as Gair Mumkin Abadi and Chaha Abnoshi reveals that it was in the ownership and possession of Mazbhi Sikhan Deh.

23. Copy of Jamabandi for the year 1953-54 reveals that during the period of consolidation of holdings, Khasra No. 803 was changed to Khasra No. 491. Neither the respondent-plaintiff nor the defendants deny existence of Gurdwara Mazbhi Sikhan on the northern side of the property in dispute. However, empirical designs of Prabandhak Committee of the said Gurdwara Sahib to spread its tentacles on other sides including towards the property in dispute are visible from photographs Ex.P19 to Ex.P22. When we examine the entire evidence, there is overwhelming evidence supporting the claim of the plaintiffs.

24. There is no dispute that the plaintiff is to stand on his own legs and cannot derive benefit of the weakness of the case of the defendants. However, it may be noticed that against this impeccable evidence of the respondent-plaintiff, there is no evidence except that of draftsman Ram Murti (DW2). Though Bhupender Singh entered the witness box as DW1 but after his examination-in-chief, he never came for his cross-examination and thus, his statement is inconsequential as the same cannot be read in evidence. Even when oculatory evidence is examined, Satnam Singh, draftsman (PW1) has clearly deposed that there were traces of existence of rooms at the suit property. He has proved site plan Ex.P1 and has stated that thus, he had shown the said rooms in the said site plan.

25. When photographs Ex.P2 to Ex.P6 as also Ex.P19 to Ex.P22 are seen in relation to photographs Ex.D2 and Ex.D3, it is clear that Gurdwara Sahib spread its domain and sweep of its property after the time of photographs Ex.P2 to Ex.P6. It thus, clearly emerges that the plaintiff who was in possession as owner of the property was dispossessed during the pendency of the suit and is entitled to recover possession of the same.

26. Consequently, it is more than clear by unimpeached evidence of the plaintiff that he is owner in possession of the property in dispute and the lower court had

misread and misconstrued the entire evidence in its judgment and decree dated 5.2.2002, whereas findings of the first appellate court in its judgment and decree dated 20.5.2003 being as per facts are correct and are, thus, maintained.

27. Sequelly, it is found that the first appellate court had rightly appreciated the evidence and has not reversed the findings of the lower court merely because the defendants had been proceeded against ex-parte before the said court. Rather, findings of the first appellate court are based on facts, appreciation of evidence as also on consideration of attending circumstances. The judgment of the first appellate court is not influenced by the fact that the defendants were ex-parte or had not been able to produce their evidence but rather is based on oral as well as documentary evidence of integrity and impeccable character produced by the plaintiff.

28. As such, substantial questions of law No.(i) to (iii), as discussed earlier, are answered in favour of the respondent-plaintiff.

29. So far as substantial question of law No.(iv) is concerned, reference may be made to Rule 20 of Order V CPC which concerns substituted service and the same is reproduced as below:

"20. Substituted service- (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(Underlining added)

(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(2) Effect of substituted service-Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed- Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require."

30. Before ordering substituted service on 4.10.2002, the first appellate court had recorded its satisfaction that there were reasons to believe that the defendants would not be served in the ordinary way and hence had ordered for the substituted service by way of publication. When after publication, respondents No. 2 to 4 had appeared through a counsel and other respondents

had not appeared before the first appellate court, rest of the respondents were rightly proceeded against ex-parte on 13.11.2002. As such, even substantial question of law No.(iv) is answered against the appellants.

31. Keeping in view the facts and circumstances as mentioned earlier, affirming the judgment and decree dated 20.5.2003 passed by the Additional District Judge, Jalandhar, this regular second appeal, being devoid of any merit, is dismissed. Decree sheet be drawn.