

(1991) 04 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 125 of 1979

Hukam Singh (Deceased) now rep. by his L. Rs.

APPELLANT

Vs

Shri Tara Singh and Others

RESPONDENT

Date of Decision : 24-04-1991

Acts Referred:

Specific Relief Act, 1963 — Section 38

Citation : (1992) CivCC 771 : (1992) 102 PLR 331

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : T.S. Mangat, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—Hukam Singh filed the preseat suit for permanent injunction restraining the defendants to make any construction and not to interfere in the peaceful possession and enjoyment of the plaintiff over the property as shown in the site plan attached. The allegation of the plaintiff is that the defendants were trying to raise construction on the piece of land in possession of the plaintiff which he was in exclusive possession and had been throwing his garbage on that place. He further alleged that he has been tethering his cattle, and discharging water of his house on this land and that the defendants had no right over this piece of land which they wanted to forcibly occupy.

2. The defendants contested the suit by filing a joint written statement. Correctness of the site plan was challenged and that the plaintiff was not the owner and had no right to file the present suit. It was alleged that the land in suit was Shamlat land and the Civil Court had no jurisdiction to try the same. Land was being used by the defendants and the plaintiff was estopped by his act and conduct to file the suit. The possession of the plaintiff, over the land in dispute, was also disputed and that he did not use the same for tethering his cattle etc.

3. The trial Court, after considering the evidence produced by the parties in the case and especially after considering the statements of D.Ws. came to the conclusion that the plaintiff was in possession of the land in dispute. The other issues were decided against the defendants. The learned trial Judge consequently decreed the suit for permanent injunction restraining the defendants from dispossessing the plaintiff except in due course of law.

4. The defendants preferred an appeal against the judgment and decree of the trial Court and the learned Additional District Judge accepted the appeal and dismissed the suit of the plaintiff. The learned Additional District Judge recorded a finding that there seems to be a passage on the land in dispute which the plaintiff had encroached upon and that he was in possession of the same as he had on earlier two occasions succeeded in resisting his dispossession. It consequently came to the conclusion that since it was an encroachment on the thoroughfare, the plaintiff was not entitled to any injunction. It is against this judgment and decree of the lower Appellate Court that the present appeal has been filed.

5. The learned counsel appearing for the appellant has argued that the judgment of the lower Appellate Court is based upon conjectures and the evidence on the record clearly go to show that there did not exist any passage over the property in dispute. He has referred to the statement of Sham Singh, D. W. 1 who admitted that land in dispute was in possession of the plaintiff for the last about 25 years. Santokh Singh D. W. 2 admitted that the Panchayat wanted to construct floor on the land in dispute but it was not permitted to do so Tara Singh, D. W. 5 has admitted that the land in dispute is a part of the house of the plaintiff This evidence thus clearly go to show that the defendants themselves have admitted the possession of the plaintiff over the property in dispute. Even the learned Additional District Judge has also, as already stated, concluded that the plaintiff was at present in possession of the site, though according to the lower Appellate Court, it was a passage. The learned counsel for the appellant also referred to the site plan and the learned Additional District Judge has only concluded that the same appears to be a passage simply because it will avoid a curve. Reference to the door of the plaintiff in the land by the learned Additional District Judge did not in any way advance the case of the defendant-respondents as the door opens in the disputed land which is in possession of the plaintiff. This door could not lead to the conclusion as has been arrived at by the lower Appellate Court that it opens on the path which was later encroached by the plaintiff.

6. Having considered the oral and documentary evidence, I have come to the conclusion for the plaintiff is in possession of the site in dispute. The learned counsel for the appellant has relied upon *Dhir Singh v. Mal Singh* 1982 P. L. J. 60, *Kanhiya v. Gram Panchayat* 1981 P.L.J. 252 and *Mohan Lal and Ors. v. State of Punjab and Ors.* 1971 P. L. J. 338 S. C.to contend that once the plaintiff was found to be in possession of the property in dispute he could not be dispossessed

except in due course of law and in the present case the plaintiff having been found in possession, he was entitled to its enjoyment till possession in due course of law even if he was not proved to be the owner of the property or that he was only a trespasser. There is no quarrel with the proposition as propounded by the learned counsel, once a person is found to be (sic) possession in whatever capacity, he cannot be dispossessed; except in due course of law. In the present case, I have already held that the plaintiff is in possession of the property in dispute and once that is so, the plaintiff was entitled to its enjoyment. At the time of admission of the appeal an ad interim injunction as prayed had been granted in favour of the plaintiff and it is stated at the bar that no proceedings whatsoever have been taken by the Gram Panchayat or any other person competent to do so to dispossess the appellant from the land in suit on the ground that it was a thoroughfare and the same had been encroached upon by him.

7. In view of what has been observed above, the appeal is allowed judgment and decree passed by the lower Appellate Court is set aside and that of the trial Court restored but there will be no order as to cost as there is no representation on behalf of the respondents.