
(2000) 05 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1527 of 2000

Jagir Singh

APPELLANT

Vs

Guru Nanak College and Others

RESPONDENT

Date of Decision : 11-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2001) 1 CivCC 297 : (2000) 126 PLR 724 : (2000) 3 RCR(Civil) 308

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

Bench : Single Bench

Advocate : Anil Chawla, for the Appellant;

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Unsuccessful plaintiff Jagir Singh filed the present appeal and has been directed against the judgment and decree dated 19.11.1999, passed by the Distt. Judge, Gurdaspur who allowed the appeal of the defendants and set aside the judgment and decree dated 15.10.1997, passed by the Civil Judge (Jr. Divn.), Gurdaspur, who decreed the suit of the plaintiff-appellant for injunction restraining the defendants from interfering in the peaceful possession of the property fully described in the head note of the plaint.

2. The brief facts of the case are that as per the plaintiff, he was in cultivating possession of the suit property for the last 15 years. The Managing Body of the Guru Nanak College was dissolved and the disputed property was under the Agriculture Department, Gurdaspur. It was alleged by the plaintiff that the defendants were threatening to dispossess the plaintiff illegally and forcibly except in due course of law.

3. The suit was contested by the defendants. It was denied that the plaintiff was in possession of the suit property for the last more than 15 years. According to the defendants, the property belonged to the Punjab Agricultural University, Ludhiana, which was in possession. This land was transferred in the name of the

Punjab Agricultural University vide Notification No. 32/90/92/K.RGI(S)3880 dated 14.12.1993, issued by Punjab Govt. On the basis of that notification, mutation No. 8434 was also entered in the revenue record. It was stated that the possession was delivered to the Punjab Agricultural University, Ludhiana, vide Rapat Roznamcha No. 96. The plaintiff is not in possession of the property. With this board defence, the defendants prayed for the dismissal of the suit.

4. The plaintiff filed replication to the written statement of the defendants in which he reiterated his allegations made in the plaint while denying those of the written statement and from the above pleadings of the parties, following issues were framed by the trial Court:

"1. Whether the plaintiff is entitled to the injunction as prayed for? OPP

2. Whether the suit is not maintainable? OPD

3. Whether notice u/s 80 CPC has not been served upon the defendant? OPD

4. Whether the suit is bad for non-joinder of necessary parties? OPD

5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Whether the plaint is liable to be rejected? OPD

1A. Whether the defendants are dispossessing the plaintiff and further not allowing the plaintiff to cultivate the suit land? OPP

2A. Relief."

5. The parties led evidence in support of their case and, finally, vide judgment and decree dated 15.10.1997, the trial court decreed the suit of the plaintiff.

6. Aggrieved by the judgment and decree of the trial Court, the defendants filed an appeal before the first appellate Court, who vide the impugned judgment and decree dated 19.11.1999 allowed the appeal of the defendants by setting aside the judgment and decree of the trial Court and dismissed the suit of the plaintiff.

7. I have heard counsel for the appellant and with his assistance have gone through the record of this case.

8. It is true that it is a judgment of reversal but if the judgment of one court, in the face of it, is erroneous and that court has not rightly appreciated the position of law, it is of no harm if that erroneous view taken by that particular court has been set aside by a superior Court.

9. Counsel for the appellant submitted that the plaintiff is in possession of the property and, therefore, he cannot be ejected except in due course of law.

10. The submission of the counsel for the appellant is misconceived. Before I could accept the contention of the counsel, appellant has to show his legal status with regard to possession. If the possession of the appellant is of a trespasser, he cannot get an injunction against the true owner in order to perpetuate his own

wrong for all times to come. It is proved in the record that the land in question was earlier the property of the State Govt. It was transferred to the Punjab Agricultural University, Ludhiana, vide a notification; mutation was sanctioned in its favour and a rapat with regard to the possession was also entered in the Rapat Roznamcha of the Patwari. Counsel for the appellant has failed to show that in the recent years, there was any valid lease or licence in favour of the plaintiff. There is no cogent proof that the plaintiff is in actual physical possession of the suit land and, in these circumstances, the possession, if any of the appellant, will be considered as that of a tress-passer.

11. Accordingly, I do not see any illegality in the impugned judgment of the first appellate court nor do I see any merit in the present appeal, which is dismissed with no order as to costs.