

(2016) 01 P&H CK 0248
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 1441 of 2012 (O&M)

Liyakat Ali and Others

APPELLANT

Vs

Devki Nandan Gupta and Others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 44

Citation : (2016) 01 P&H CK 0248

Hon'ble Judges : Raj Mohan Singh, J.

Bench : Single Bench

Advocate : Sachin Mittal, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

Raj Mohan Singh, J.—C.M. No. 3896-C-2012

1. Perusal of the record reveals that reply dated 04.08.2014 filed by respondent No. 3 to the application i.e. CM No. 3896-C-2012 for condonation of delay is already available on record. In view of the aforesaid, there is no need to file fresh reply on behalf of the respondents. The reasons for delay as pointed out in the application have been attributed to the functioning of Advocate engaged by the applicant-appellant. The applicant was never informed by the Advocate namely Ashraff Hussain who had assured the applicant-appellant that necessary intimation would be given in respect of outcome of the appeal on final adjudication. On coming to know about the fate of the appeal, the present appeal came to be filed and in this way delay of 252 days in filing appeal has occurred.

2. A complaint dated 20.03.2012 has been moved by the applicant-appellant against the Advocate namely Ashraff Hussain before the Bar Council of Punjab and Haryana High Court, Chandigarh. The application has been contested by the respondents by filing reply.

3. Having considered the issue of condonation of delay, this Court finds that delay in question is solely attributable to the conduct of the lawyer for which

adequate steps have been taken by the applicant-appellant by way of moving appropriate complaint before the Bar Council of Punjab and Haryana High Court, Chandigarh. Therefore, in considered opinion of this Court, delay of 252 days in filing the appeal needs to be condoned.

4. Delay in filing the appeal is hereby condoned.

RSA No. 1441 of 2012(O&M)

5. After condoning the delay, this appeal is being taken up for decision on merits with concurrence of both the parties. Plaintiffs-appellants filed the suit for permanent injunction seeking restriction against the defendants from interfering in the peaceful possession over the suit land, as depicted in para No. 1 of the plaint.

6. Plaintiffs alleged that they are tenants in possession of the land bearing rectangle No. 79, Killa No. 20/2 (1-6), situated in the revenue estate of Ferozpur Jhirka, District-Mewat. The Plaintiffs asserted that they are in possession over the suit land for the last more than 30 years and their possession is continuous. On the other hand, defendants are strangers having no right, title or interest in the suit land. Prior to the plaintiffs, their father, namely, Rehman was in possession of the suit land and after his death, plaintiffs came in possession.

7. The suit has been contested by the defendants. The defendants have denied the plea of the plaintiffs-appellants being tenants over the suit land for the last 30 years. Defendants claimed that Government Primary School, Dhond Kalan, is being run on the suit land since 1963 and the same belongs to Government of Haryana. The school building is in existence on the suit land where students are studying. The said school is running in the name and style of Government Primary School, Dhond Kalan, Tehsil Ferozepur, Jhirka, District Mewat. The construction of the school was completed in the year 1963. One room and varandha was constructed about 15 years back. After filing of replication, following issues were framed by learned trial Court vide order dated 11.05.2007.

(1) Whether the plaintiffs are entitled to a decree of permanent injunction as prayed for? OPP

(2) Whether the plaintiffs have no locus standi & cause of action to file present suit. OPD

(3) Whether the suit is time barred? OPD

(4) Whether the suit is not maintainable in present form? OPD

(5) Whether the suit is liable to be dismissed because of concealment material facts from the Court? OPD

(6) Whether the suit of the plaintiffs is liable to be dismissed because of the non serving of legal notice by the plaintiffs before filing the present suit?

(7) Relief

8. Trial Court decreed the suit of the plaintiffs to the extent that the defendants shall not interfere and raise construction over the suit property bearing rectangle No. 79, Killa No. 20/2 (1-6) except in due course of law.

9. The defendants feeling aggrieved against the judgment and decree dated 17.04.2010 passed by the trial Court, filed an appeal before the learned Addl. District Judge, Nuh. The learned Addl. District Judge, Nuh, vide judgment and decree dated 19.04.2011 accepted the appeal on the ground that possession of the plaintiffs and their predecessor-in-interest over the suit land was unauthorized and could be called as adverse possession, but since there is no pleadings or evidence with regard to adverse possession, therefore, possession of Rehman was treated to be unauthorized and plaintiffs have no legal right to claim that the school was being raised over the suit property without their consent.

10. In the grounds of appeal, the appellants have formulated the following law points.

(i) Whether the judgment and decree passed by learned first appellate Court after setting aside the well reasoned judgment passed by the learned trial Court, which is based on appreciation of facts, material evidence and law point involved has been set aside on misreading of documentary evidence is not liable to set aside on this ground only?

(ii) Whether the judgment passed by learned first appellate court, which is entirely based on assumption and presumption being not based on oral or documentary evidence that too against the well established principle of law laid by Hon"ble Apex Court of the country as mentioned in the ground of appeal is not illegal and perverse and liable to be set aside and quashed?

11. I have considered the submissions made by the parties at the bar with reference to legal proposition raised.

12. Jamabandi for the year 2000-2001-Ex.P1 reflects the possession of Rehman over rectangle No. 79, Killa No. 20/2. Similarly, Jamabandi for the year 1985-1986 (Ex. P-2) also reflects the possession of Rehman over the said rectangle No. 79, Killa No. 20/2. However, the same land Khasra Girdawari (Ex.P-3) is also in consonance with the aforesaid position. Even the documents viz. Ex. P-1 to Ex.P-3 if read with the deposition of PW1-Liyakat Ali then possession of the plaintiffs over the suit would come to fore.

13. The defendants have taken a positive stand that there exists a school in the suit land, which was constructed in the year 1963 and many students are studying therein.

14. DW1 Bhagwani Devi has deposed with reference to documents Ex DW1/A and Ex. DW1/B. The site plan DW1/B has not reflected the structure of the said school. Similarly, DW1/A also does not reflect that the structure of the said school is over the suit property. The affidavit Ex.DA which the witness DW1 has

adduced on record even does not contain any affirmation to the effect that the school exists over the suit land. Similarly Mahender Kumar (DW2) has deposed with reference to photographs Ex.DW2/A to Ex.DW2/H. Even a perusal of photographs did not co-relate the structure shown in the said photographs vis-a-vis rectangle No. 79, Killa No. 20/2.

15. The defendants have not produced any proof regarding the existence of school over the suit land. The jamabandi produced by the plaintiffs, have presumption of truth until and unless rebutted by the cogent evidence. It was for the defendants to lead evidence in rebuttal, so as to rebut the presumption attached to the jamabandis under Section 44 of the Punjab Land Revenue Act, 1887. The defendants have not rebutted the presumption by proving that the structure of the school exists over the suit property.

16. A perusal of the jamabandi for the year 1985-1986 reveals that one Khubi son of Khushi Ram was shown in the column of ownership and one Rehman son of Nawab Khan predecessor-in-interest of the plaintiffs was shown as "gair marusi" over Khasra No. 20/2, khewat No. 706/669 khatoni No. 778 of Rectangle No. 79, Killa No. 20/2 (1-6), situated within the revenue estate of Ferozepur, Jhirka. The aforesaid entry was continued jamabandi for the year 2000-2001 (Ex.P1).

17. The Entry in column Nos. 9 and 10 of the aforesaid jamabandis have entry of Billa Lagaan Ba-Wajah gair hajir Maalik. The entry shows that possession of the plaintiffs and their predecessor-in-interest over the said land was unauthorized and could even be called as adverse possession. Since there are no pleadings of adverse possession, therefore, the possession of Rehman which is continuing since long over the suit land could at the most be interfered with under due process of law.

18. Once the column of ownership shows the name of Khusali and column Nos. 9 and 10 carrying the entry of Billa Lagaan Ba-Wajah gair hajir Maalik, the locus of the defendants to claim the land as real owner could have come forward to deny injunction in favour of the unauthorized occupant against true owner, but so far as the locus of the defendants-appellants, who are neither descendants of Khusali recorded owner in claim of ownership, nor have any prima facie connectivity with the suit land, therefore, the observation of the lower appellate court to connect the suit land with that of school was unjust.

19. The lower appellate court without connecting the suit land with the title of defendants-appellants accepted the appeal thereby denying injunction in favour of the appellant even against the person who has not been recorded to be the owner of the property.

20. It is settled principle of law that a person in established possession can only be ejected in due course of law. However, a rent trespasser, whose entry on the suit land is not by way of lawful means cannot claim injunction against true owner. The defendants have not led any evidence to be the true owner of the suit

land. The evidence led by the defendants viz. DW1, DW2 with reference to Ex. DW-1/A, Ex. DW-1/B, Ex. DW-2/A to Ex. DW-2/H do not prescribe that the land subject matter of these instances is the land comprising rectangle No. 29/2012. In the absence of the said connectivity, defendants cannot be permitted to say that the school building is existing on the land in question and the same is being run as a school where students are studying, but the question as formulated by the appellants do exists in the present helm of affair. The lower appellate court, in considered opinion of this Court has gone beyond jurisdiction in rejecting the claim of the plaintiffs for permanent injunction even after finding them in unauthorized possession since long. The judgment and decree of the lower appellate court is proposed to be on account of misreading of the documentary evidence and, therefore has resulted in perversity. Both the questions so arise in the present case and the same are answered by the appellants.

21. Consequently, this appeal is accepted and the impugned judgment and decree dated 19.04.2011 passed by Addl. District Judge, Nuh, is hereby set aside and judgment and decree dated 17.04.2010 passed by Civil Judge (Jr. Div.), Ferozepur Jhirka, is hereby restored.