

(2007) 05 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 738 of 2007

Lok Ram and another

APPELLANT

Vs

Murti Shri Shivji Maharaj Ji and others

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Citation : (2007) 2 ILR (P&H) 271 : (2007) 3 RCR(Civil) 608

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Ms. Alka Sarin, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J. (Oral)

1. The present Regular Second Appeal has been filed against the judgments and decrees passed by the learned Courts below dismissing the suit filed by the plaintiffappellants for permanent injunction.

2. The plaintiffappellants had filed a suit on the plea that they and defendant No. 3 were tenants in possession of land measuring 19 kanals 19 marlas situated within the revenue estate of Rewari, Tehsil and District Rewari, under defendant No. 1. It was claimed that Budh Ram, predecessor in interest of the plaintiffs and defendant No. 3 were in possession of the suit land as tenant and after his death tenancy rights were inherited by the defendants from Budh Ram and now the plaintiffs are tenants in the land in suit. It was also claimed that earlier Ram Chander son of Jai Gopal had become owner of the suit land by way of operation of provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. Budh Ram was inducted as a tenant by Lala Ram Chander. Subsequently, a trust deed was executed on 12.9.1955 by Ram Chander creating a trust of Mandir Shri Shivji Maharaj Kagjiwalan. Besides Ram Chander, there were other cotrustees. It was also claimed that the management of the Trust was entrusted to defendant No. 1 i.e. temple Shri Shivji Maharaj and other lands. It was further the case of the plaintiffappellants that thereafter Saini Sabha interfered in the peaceful possession of plaintiffs and defendant No. 3 and suit was filed on 2.9.19980 in the civil Court at Rewari titled as Lok Ram v. Ram Autar and others

for declaration as well as for permanent injunction challenging the judgment and decree dated 31.12.1975 which was passed by the Assistant Collector Ist Grade, Rewari and affirmed by the Collector, Narnaul and Commissioner, Hisar Division. The suit as well as the appeal was dismissed and Regular Second Appeal was pending before the High Court against the said judgments and decrees. It was also claimed that defendant Nos. 1 and 2 had been admitting the possession of the plaintiffs and defendant No. 3. It was also claimed that Saini Sabha through its President entered into a compromise on 25th October, 1993 which entitled the plaintiffappellants to retain the possession of 1500 sq. yards of land and the possession of the remaining land was taken from the plaintiffs and defendant No. 3. It was also claimed that Saini Sabha paid a sum of Rs. 2,20,000/ (Rs. two lacs twenty thousands) in lieu of relinquishment of land of khasra No. 35 except 1500 sq. yards of land in favour of Saini Sabha. The document was to be registered qua the land measuring 1500 sq. yards so as to effect the sale in favour of the plaintiff appellants and defendant No. 3. It was further claimed that possession of land measuring 155 sq. yards was to be given to Saini Sabha and the Saini Sabha would pay the amount in three equal instalments. The first instalment was payable on 31st January, 1994 and last instalment on 31st March, 1994. The said amount was to be paid in lieu of relinquishment of the possession and tenancy rights in respect of the suit land comprised in kahrasa No. 35 except to the extent of 1500 sq. yards. It was also the case of the plaintiffs that the said compromise was approved in the General Meeting of the Saini Sabha which was held on 25th December, 1993. The meeting was convened under the Presidentship of Shri Manohar Lal Saini in which a resolution approving the compromise was passed. Defendant Nos. 1 and 2 were said to have signed the resolution deed. It was also claimed that in pursuance to the said compromise, the plaintiffs delivered possession of the land except 1500 sq. yards to defendant No. 2Saini Sabha and area of 1500 sq. yards was retained by the plaintiffs. It was further claimed that the defendantrespondent Nos. 1 and 2 failed to comply with the said compromise and they failed to make the payment of Rs. 2,20,000/ as agreed to by defendant No. 2. It was also claimed that by raising a wall, the defendantrespondents interfered not in the land delivered by the plaintiffs but also in the peaceful possession of the remaining land of 1500 sq. yards of the plaintiffs and defendant No. 3. It was also pleaded that threat of forcible possession was given by the defendants. It was also claimed that defendantrespondents were asked to remove the construction, but they failed to do so. Therefore, the suit was filed.

3. The suit was contested by taking preliminary objections regarding maintainability of the suit, cause of action, locus standi, estoppel, affixation of less courtfee, res judicata and limitation. It was further claimed that the suit was liable to be stayed under Section 10 CPC and further the suit was barred under Order 23 Rule 3 of the Code of Civil Procedure.

4. On merit, the claim of the plaintiffs and defendant No. 3 being tenants was contested. It was asserted that they remained tenants on the land in dispute.

The correctness of the site plan was contested. It was further claimed that Budh Ram was not the tenant of the land in dispute, whereas defendant No. 2 was said to be using the property in dispute. It was claimed that there was a play ground of Saini School in the land in dispute and classes were being held in that property. Defendant No. 2 admitted that Ram Chander had become owner of the suit land by way of operation of law. The deceased Budh Ram was kept as servant to look after the temple and perform pooja therein. It was also claimed that the plaintiffappellants have not mentioned as to how and on what condition, Budh Ram was inducted as a tenant. It was also the case of the defendants that trust deed was created regarding the property in question by Lala Ram Chander on 12.9.1955 on which the deceased Budh Ram put his signatures. The trust deed was also executed in favour of the defendants regarding the land in question by Muna Lal and Ram Avtar. It was also claimed that plaintiffs are not in possession of the suit land as tenants nor they were in possession of the suit land at the time of filing of the suit. It was further claimed that the plaintiffs have lost their legal battle before the revenue Courts upto Financial Commissioner and civil suit upto the Appellate Court against which the appeal was pending before this Court. It was also claimed that the agreement dated 25.10.1993 is illegal and void. It was denied that Saini Sabha passed any resolution in its General Meeting for that compromise nor it was ratified by the general body of Saini Sabha. It was also the case of the defendants that they had got no right to sell the land in dispute nor any agreement to sell 1500 sq. yards of land with the plaintiffs ever took place. It was also claimed that defendant No. 2 was in possession of the land in dispute prior to 25.10.1993. The agreement to pay Rs. 2,20,000/ to the plaintiffs was also denied.

5. Defendant No. 1 filed a separate written statement in which similar pleas as raised by the defendant No. 2 were taken.

On the pleadings of the parties following issues were framed :

"1. Whether the plaintiffs are entitled to the relief of mandatory and permanent injunction as prayed for in para No. 24 of the plaint ? OPP

2. Whether the plaintiff and defendant No. 3 have no locus standi to file the present suit ? OPD

3. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD

4. Whether the plaintiffs are estopped from filing the suit by their own act and conduct ? OPD

5. Whether the suit of the plaintiffs is hit by Section 10 CPC and is also barred by principle of res judicata ?

6. Relief."

On appreciation of evidence on record, the learned trial Court decided issue No. 1 against the plaintiffs by holding that they had failed to prove that they are

entitled to mandatory or permanent injunction. Issue Nos. 2, 4 and 5 were decided against the defendants. On issue No. 3, it was held by the learned trial Court that the suit filed by the plaintiffs was not maintainable as no relief of possession was sought.

6. The plaintiffappellants filed an appeal against the said judgment, which was also dismissed by the learned lower Appellate Court. It was held by the learned lower Appellate Court that the plaintiffs had based the second suit on the basis of compromise dated 35.12.1993. It was observed that no evidence was produced to show that the said compromise or resolution was duly passed and approved by Saini Sabha (registered), Rewari, by passing a general resolution. It was further held that the plaintiffs were not in possession of the suit land and, therefore, they were not entitled to injunction of any kind. Thus the findings of fact recorded by the learned trial Court were affirmed. Resultantly, the appeal was dismissed.

7. Learned counsel appearing on behalf of the appellants vehemently contended that even if the plaintiffs had failed to prove his possession over 1500 sq. yards of land, still the learned Courts below could not have rejected the plea of mandatory injunction seeking the possession back from the defendant respondents as they had taken the said possession under the compromise. However, the reading of the judgment shows that no such case was argued before the learned lower Appellate Court, rather the stand taken was that the plaintiffappellants were entitled to the possession of the property under the compromise said to have been executed on 25.12.1993. However, the learned Courts below have found as a fact that the said compromise was never approved by the Saini Sabha and thus no reliance was placed. It was also held that the suit, as framed, was not competent as the plaintiffappellants failed to seek possession of the property in dispute. The concurrent findings of fact are not open to challenge in the Regular Second Appeal.

Accordingly, there is no merit in this appeal which is dismissed.