
(2015) 07 P&H CK 0350

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2015 of 2009 (O and M)

Parbhati

APPELLANT

Vs

Nanak Singh and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Citation : (2015) 07 P&H CK 0350

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : M.L. Sarin, Sr. Advocate and Alka Sarin, Advocate, for the Appellant;
Aneesh Setia, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—The dispute relates to land falling in Khewat 338, Khatauni 457, Rectangle/Khasra 144 [2-10] at measuring 2K-10M [for short, "Khasra 144"] described in the revenue record as Gair mumkin abadi. Admittedly, there are dwelling houses constructed on Khasra 144. The land in dispute is situated at village Bhulwana, Tehsil Hodal, District Faridabad. The plaintiffs are three in number. The suit is for permanent injunction restraining the defendants from taking illegal and forcible possession of the suit property and from demolishing the ancestral house of the plaintiffs. The plaintiffs claim they are lawful owners in possession of the residential house in the suit property. To prove their rights in the land, they depend on Jamabandi for the year 1992-93. The suit was instituted on 1st May, 1997 on the file of the Court of the Additional Civil Judge, Senior Division, Palwal. The suit has been decreed on 22nd February, 2006. There are 40 defendants of which 1 to 19 were ex parte. The contesting defendants are 22 to 40.

2. There is previous litigation involving Khasra 144. The first Civil Suit 296 of 1987 titled "Chandri through LRs Nanak Singh v. Parshadi Lal deceased through Lrs through Basanti etc." was dismissed by the Sub Judge, 1st Class, Palwal on 9th May, 1992 holding the defendants therein to be in adverse possession of

Khasra 144. It may be mentioned that the suit was filed by defendants 1 to 18 in the present suit being LR's of Chandri against defendants 23, 24, 25 to 31, 34, 38 to 40. The suit was for ejectment and in the alternative for possession on the ground that the plaintiffs in that suit were owners of residential plot/land bearing Khasra 144. They claimed to have succeeded to the suit property through their father and that the defendants have no right, title or interest therein. The defendants therein appear to be Harijans and along with other Harijans had approached the plaintiffs for permission to build temporary huts on the suit property and it was the defendants' case that they were permitted to make huts on the land.

3. However, in the written statement filed by the defendants in that suit, they pleaded that the plaintiffs were not owners of the residential land falling in the abadi and they claimed themselves to be owners by adverse possession which was open and hostile to the plaintiffs. The Civil Court dismissed the suit and held the defendants to be in adverse possession. The appeal against the decree bearing Civil Appeal 233 of 26th May, 1993 was unsuccessful and the judgment and decree dated 9th May, 1992 was upheld. Against the appellate decree, LR's of Chandri filed RSA 296 of 1997 which is pending in this Court after it was admitted on 18th March, 1997. This was the first round of litigation.

4. In the second round of litigation and parallel to the previous suit, Civil Suit 261 of 6th May, 1989 was instituted. This suit was filed by the present defendants 20 to 40 in case titled Parshadi [deceased] through LR's against plaintiff Parbhati herein and the present defendants 1 to 19. This suit was for permanent injunction wherein Parbhati etc. claimed themselves to be owners of Khasra 144. The suit was filed on the premise that the defendants were attempting to dispossess them from the suit land forcibly. The defendants denied ownership of the plaintiffs. The suit was decreed. The appeal was dismissed on 12th June, 1995. The court of first appeal held that the judgment and decree dated 9th May, 1992 passed in the previous suit would operate as *res judicata* between the parties.

5. Aggrieved by the appellate decree, the defendants filed RSA 1388 of 1997 in which plaintiff 1-Parbhati in this appeal was a party appellant 7. The second appeal was admitted on 18th July, 1997 and was ordered to be heard with pending RSA 296 of 1997. This is how both the second appeals are pending in this Court.

6. There was a third round of litigation in Civil Suit 414 of 1997 filed on 26th March, 1997 [Ex.D3]. This suit was filed by one Dharam Singh against the present defendants 1 to 40 and Parbhati [plaintiff 1] in the present suit was arrayed as defendant 9. The prayer in the suit was for a decree for permanent injunction restraining the defendants therein from taking illegal and forcible possession of the suit property and from demolishing the residential house of plaintiff-Dharam Singh said to be built on khasra 144. In this suit also, defendants 1 to 19 did not put in appearance and neither did Parbhati-plaintiff 1

herein. However, defendants 20 to 40 contested the suit. This suit was dismissed on 16th October, 2004.

7. There was a 4th round of litigation initiated in Civil Suit 1090 of 1st May, 1997 with respect to the same property from where the present appeal arises.

8. Broad facts of the present case, in the attack and the defence:

9. The plaintiff admitted in para. 6 of the plaint that as per jamabandi for the year 1992-93 relied upon by them, Khasra 144 is in recorded ownership and possession to the extent of 1/3rd share in the name of defendants 1 to 18 as joint owners in joint possession and remaining defendants 19 to 40 are recorded to be in joint possession to the extent of 2/3rd share but the plaintiff pleaded that the entries in the jamabandi and the Khasra Girdawaris are not as per the position on the spot and have been recorded in breach of the provisions of the law and the revenue procedure. The factual position at the spot asserted is that entire Khasra 144 admeasuring 2K-10M of land have thereon residential houses existing since the years 1931-35 and the respective positions at site continued in the settled possession. The plaintiffs alleged that defendants 19 to 40 as well as defendants 1 to 18 are bent upon to take forcible and illegal possession from the plaintiffs in collusion with each other. The judgment and decrees of the civil courts obtained prior thereto with respect to Khasra 144 are not binding on their rights, title or interest since the plaintiffs have become lawful owners by adverse possession and their possession is open, continuous, uninterrupted, hostile to the notice and knowledge of the defendants since 1931-35 or more specifically since independence in 1947.

10. The plaintiffs aver that in the previous litigation, no demarcation of Khasra 144 was effected before the decrees were passed and drawn. The plaintiffs have come into possession of the suit property through their forefathers and in case the designs of the defendants are not repelled by a decree of the court, substantial loss and irreparable injury would result to the plaintiffs which cannot be compensated in terms of costs and money. The plaintiffs asserted that they were in possession of the house in dispute till the filing of the suit.

11. On notice, defendants 20 to 31, 33 to 40 presented their written joint statement and took several preliminary objections with respect to locus standi; want of cause of action; lack of maintainability of the suit in the present form and collusion between the plaintiffs and defendants 1 to 18 but who would later remain ex parte. Further, the suit is barred by principles of res judicata and the suit is an abuse of the process of law since defendants 1 to 18 as well as the plaintiffs have filed successive suits with respect to the property in dispute by concealing material facts from the Court and they have not come with clean hands.

12. On merits, the defendants have denied that the plaintiffs are owners in possession of the alleged ancestral house depicted with letters IJKL in the site plan. The boundaries are not admitted to be correct and neither the site plan

attached to the plaint. They complained that since the site plan was not supplied to them with the summons, they reserve their right to file an amended written statement as and when the site plan is supplied. The defendants disclaimed any knowledge of pending appeals before the High Court. They asserted that they were in actual physical possession of the entire land on which the houses of the defendants are in existence from time immemorial. The defendants asserted that the names of defendants 1 to 18 are incorrectly being recorded in the revenue record contrary to facts and law. The said entries are liable to be corrected in favour of the replying defendants. The answering defendants denied that the plaintiffs are in adverse possession of the suit property. On these pleadings, the trial court framed as many as 5 issues which reads as under:-

1. Whether the defendants are liable to be restrained from dispossessing the plaintiffs from the suit property on the grounds as alleged in the plaint? OPP
2. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
3. Whether the present suit is not maintainable in the present form? OPD
4. Whether the present suit is barred by the principle of res judicata? OPD
5. Relief.

13. Parties led their respective evidence both parol and documentary in support of their cases. These were mostly jamabandis, khasra girdawaris and judgment passed in Civil Suit 144 of 1997 [Ex.D3] and the site plan and the plaint filed in that case as Mark A and B and the jamabandi Ex.DX.

14. In the oral evidence led by the plaintiffs, there are depositions recorded that the residential houses have been constructed over Khasra 144 but the land has not been partitioned. The plaintiffs have been in long settled and exclusive possession of their residential houses.

15. The defendants argued before the trial Judge that Civil Suit 414 of 1997 filed by Dharam Singh on the same grounds as in the present suit with the same site plan Mark A was dismissed on 16th October, 2004 vide judgment and decree Ex.D3. From this, it is argued that the present plaintiffs are estopped from raising the issue again since the attempt is hit by the principle of constructive res judicata although the parties may be somewhat different but the subject matter and corpus is the same. Similarly, in the defendants oral testimonies, it has come that the ownership and possession rests in defendants 19 to 40 at the spot and this fact is established by the proceedings in the previous suit 414 of 1997 but there is no dispute that the suit property falls in Khasra 144. There are other oral testimonies for and against the points of friction i.e. as to which party was in actual physical possession over the disputed property. To resolve the competing interests, the trial Judge perused jamabandi Ex.P2 and Khasra Girdawari Ex.D2 which revealed that it was the defendants who have been shown to be owners in possession of Khasra 144 and the plaintiffs' name is not incorporated at any

place in the documents. The trial Judge read the cross-examination of Parbhati plaintiff 1 and found an admission there that his name is not incorporated and he has not filed the suit against the defendants Parshadi, Khachera and Bhikhu but has filed the same against Chandri but surprisingly Chandri is not a party to the suit. He further deposed that defendants 19 to 40 are owners in possession over Khasra 144 and they have cordial relations and he perceived no threat in any manner that they wish to dispossess him. The trial Judge has pinned the case down to the material deposition of Parbhati. The trial Court records that from a perusal of the suit in Dharam Singh's case and the present one there is a common factor that the site plans in both the suits match and when that earlier suit stands dismissed, nothing remains to be decided in the present case since the oral and documentary evidence do not support their versions in the plaint. The trial Judge dismissed the suit on 22nd February, 2006.

16. In the appeal carried to the court of learned Additional District Judge, Fatehabad, the unsuccessful plaintiffs refurbished their pleadings, evidence, both oral and documentary to pray for setting aside of the judgment and decree of the trial Court. The court of first appeal tread the correct path and culled out the main issue as to whether a plea of adverse possession was available to the plaintiffs over the house in dispute built in Khasra 144. If the possession was with the defendants, the evidence was required to be re-appreciated from scratch. The version of the plaintiffs that they had purchased the suit land from Kishori Brahman was not found tenable since there was no document or evidence to support the plea. The lower appellate court again read the testimony of plaintiff Parbhati and the admissions therein so far as defendants 19 to 40 are concerned. The Court did not accept the bald statements of PW1 and PW2 since they were found not reliable or sufficient to conclude in favour of the plaintiffs. The appeal court found no material from which existence of a house of the appellants in Khasra 144 could be recorded as a finding of fact. The plaintiffs had failed to discharge the burden placed on them to show or prove their possession over the corpus. For these reasons, the appeal was dismissed on 13th December, 2008.

17. Aggrieved by the decree dismissing the suit, Parbhati is in appeal represented by Mr. M.L. Sarin learned senior counsel assisted by Ms. Alka Sarin and the respondents have appeared through Mr. Aneesh Setia for respondents 19 to 40. They have been heard at length by this Court.

18. Two questions of law which are said to be substantial in nature have been proposed by Mr. Sarin in the memorandum of appeal and these are:-

- a) Whether the plaintiff-appellant could be non-suited only account of his deposition in Court without adverting to the documentary evidence available on the record?
- b) Whether the judgments and decrees passed by the Courts below are perverse and unsustainable?

19. I do not think either of the two can detain us for a valid consideration to reverse the appellate decree. If the oral testimony of Parbhati appearing as a witness in support of the case of the co-plaintiffs is incompatible with the version propounded in the plaint, then there is a categorical admission of Parbhati that contesting respondents 19 to 40 are in settled and exclusive possession over the property falling in disputed khasra 144.

20. It is the contention of Mr. Sarin that the appellants Parbhati etc. cannot be non-suited only on a deposition in court without the Court adhering to the documentary evidence available on record and reading it properly. I fail to see or read in the documentary evidence on record, any other view possible than the one taken by the courts below. Neither the jamabandi nor the Khasra girdawari speak for the plaintiffs-appellants and I would not for a moment think that any interference is called for against pure findings of fact recorded by the Courts a quo after fairly and properly appreciating the evidence adduced on record, the weight of which lies heavy on the shoulders of the plaintiffs and the present single appellant to dispel.

21. In any case, the suit is one for mere permanent injunction and is not a title suit. The decisions as to title will rest in the final outcome of the regular second appeals pending in this Court and, therefore, no comment is made with respect to ownership since this Court is concerned only with the finding on possession in a suit for permanent injunction for restraining the defendants from interfering in the possession of the three plaintiffs over the disputed property.

22. Mr. Sarin then argues that this appeal may be connected with the pending regular second appeals to avoid any conflict of decisions. I am afraid the argument is misconceived since the decision in the present appeal could never be viewed or conceived to impact the decision this Court might take in the pending appeals in which the present parties are the parties in those cases. It can never be visualized in law that a decision in a simplicitor suit for permanent injunction would hold any sway in the minds of this Court while deciding the pending regular second appeals where the issue of title will be adjudged. I, therefore, find no reason to connect the present appeal with RSA 296 of 1987 and RSA 1388 of 1997. The present appellant Parbhati is appellant 7 in the second RSA and he will have every right to urge and demonstrate his case on merits in those appeals.

23. For the foregoing reasons, I find no merit in this appeal and would dismiss it. The proposed questions of law are not substantial in nature and are found not fit to detain this Court for any further hearing in the second appeal side of this Court.