
(2001) 07 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1521 of 2001 (O and M)

Prabhu Nath

APPELLANT

Vs

Dharam Nath and Others

RESPONDENT

Date of Decision : 27-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (2001) 4 RCR(Civil) 462

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

Bench : Single Bench

Advocate : Rajesh Arora, for the Appellant;

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Unsuccessful plaintiff has filed the present appeal and which has been directed against the judgment and decree dated 16.12.2000 passed by the Addl. District Judge, Faridabad, confirming the judgment and decree dated 30.8.1999 of the trial Court vide which the suit of the plaintiff for permanent injunction was dismissed.

2. The case set up by the plaintiff in the trial Court was that he and his forefathers being Snake Charmers by caste were residing in Tilpat, as residential plot measuring 144 square yards was given to him out of Khasra No. 148 (8 kanals 18 marlas). Thus, he is in possession of the said property. The defendants are strangers and want to interfere in his possession.

3. The suit was contested by the defendants on the plea that the plaintiff has no right, title or interest in the suit property and there is no allotment in favour of the plaintiff as alleged by him.

4. With these pleadings, the trial Court framed the following issues :-

1. Whether the plaintiff is owner and in possession of the disputed land detailed in para 1 of the plaint ? OPP

2. Whether the defendants are residing in District Hissar ? OPP
3. Whether the plaintiff has no cause of action to file the present suit ? OPD
4. Whether the plaintiff is estopped from filing the present suit by his own acts and conduct and misbehaviour? OPD
5. Whether the suit of the plaintiff is not maintainable ? OPD
6. Relief.

The parties were given opportunities to lead evidence and vide judgment and decree dated 30.8.1999, the suit of the plaintiff was dismissed by the trial Court.

5. Unsuccessful plaintiff, thereafter, filed an appeal before the Addl. District Judge, which was also dismissed for the reasons given in paras 15 to 22 of the impugned judgment.

"15. It is axiomatic from the pleadings of the parties that the land measuring 8 kanals 18 marlas situated within the revenue estate of Tilpate was given to Tribal Community i.e. Snake-Charmers by the Gram Panchayat for their rehabilitations. In the given circumstances, the only contentious point is germane to the ownership and possession over the disputed portion of the said property as both the parties have claimed ownership and possession thereof. The plaintiff stepped into the witness box as PW1 and deposed that he resides in Tilpat from the time of his fore-fathers and residential plot measuring 133 square yards was allotted by the Gram Panchayat and thus he raised construction thereon. The defendants reside in Fajjupur Majra. Therefore, they have no concern with it. He is paying Chulha tax in view of the ration card Ex.P2. In the state of cross- examination, he admitted that site plan Ex.P1 was prepared by Clerk of his counsel while sitting in the precincts of the Court as per his instructions. Consequently, it can be safely gathered that site plan Ex.P1 does not inspire confidence from any angle. He also admitted that in view of Ex. P3, jamabandi for the year 1991-92, Grain Panchayat is owner of the property in dispute and Snake-Charmers are in possession thereof.

16. PW2 Pushkar has deposed that defendant hails from District Hissar and presently he resides in village Fajjupur Majra. However, the defendant resides sometime in village Tilpat with his maternal uncle Prabhu Nath. Further land measuring 8 kanals 18 marlas was left and allotted to the forefathers of the Snake-Charmers by the Gram Panchayat of village Tilpat. However, the land in dispute measuring 30x40 feet was allotted to the father of plaintiff and the plaintiff has raised construction.

17. On the other hand, the defendant has examined DW1 Nand Kishore Vice-Sarpanch of the village and both the parties are well known to him. He has categorically stated that the plaintiff and defendant do reside in village Tilpat as the land measuring 8 kanals 18 marlas comprised in Khasra No. 148 was allotted to their forefathers. The defendant is paying Chulha tax vide receipt Exs.D1 to

D4. In the state of cross-examination, he has highlighted this glaring fact that plaintiff is neither owner nor in possession of the land in dispute.

18. DW2 Kale Ram being Ex Sarpanch of village Tilpat, 84 years of age, has deposed that land on which plaintiff resides at present was given to his father Singh Nath by Gram Panchayat Tilpat. However, this land belongs to the Gram Panchayat. He further testified that father of the defendant was also allotted land upon which the defendant is residing at present. It is note- worthy that as reflected in the cross examination, DW2 remained Sarpanch of village Tilpat from 1954 to 1962. Consequently, he is supposed to be well conversant with the facts of the case in hand. Therefore, it can be safely gathered that the testimony of DW2 cannot be discarded.

19. DW Sat Parkash Mittal has proved site plan Ex.DW3/A which shows that defendant is residing in the property situated in village Tilpat.

20. DW4 Dharam Nath defendant himself testified that the plaintiff intends to grab his land in the garb of filing the suit. The plaintiff owned and possessed other house in the area measuring 300 square yards. The plaintiff consequently, has no nexus with the property in question. The defendant has also brought on record Identify Card Ex.DW4/B and ration card Ex.DW4/C whereas Ex.DW4/D is previous ration card. Further, Ex.DW4/E ration card was issued in the year 1967 and his bank account is Ex.DW4/F. He raised construction of two rooms upon the land in dispute. However, he has admitted that the plaintiff is related to be his maternal uncle. His testimony could not be shattered in material particulars despite searching cross examination. He admitted that both he and the plaintiff do reside in Ward No. 12.

21. Ironically, the plaintiff has woefully failed to produce document with regard to his ownership and possession over the plot in question. Ex.D3 jamabandi for the year 1991-92, unambiguously reflects that Gram Panchayat is owner of the land measuring 8 kanals 18 marlas and Snake- Charmers do reside thereon. In the given circumstances, the plaintiff is saddled with tremendous responsibility to establish that he is owner in possession of the suit land measuring 133 square yards out of the total chunk of land i.e. 8 kanals 18 marla. It is irony of the situation that plaintiff has utterly failed to lead cogent and convincing evidence in this direction. The documents brought on record as above discussion do not identify (identify ?) the suit property regarding which he has raised his claim. It is well settled principle of law that the plaintiff is required to stand on his own legs but not on the weakness of the defendant.

22. On the other hand, the defendant is also one of the Snake-Charmers families to whom the land for residential purpose was allotted by the Gram Panchayat, Tilpat out of the total land of 8 kanals 18 marlas and his testimony has been duly supported by the village Sarpanch, who remained as a Steward of village continuously for 10 years being 84 years of age. Therefore, his testimony is worthy of credence. Further, truthfulness of the testimony of Ex-Sarpanch is also

established in the light of the Voter-list and Ration-card brought on record by the defendant in support of his case as above discussed in detail. The Bank Account record has also emboldened the stand of the defendant. Moreso, Ex. DW4/B Identity Card issued by the Election Commission also establishes this glaring fact that the defendant does reside in village Tilpat. Consequently, I have no hesitation to say that defendant has emerged as triumphant to establish that he is a resident of village Tilpat for the last more than 40 years. With these observations, I apparently do find a merit in the contentions raised by Mr. Bhardwaj, learned counsel for the respondent whereas the contentions made by Mr. C.P. Sharma, learned counsel for the plaintiff-appellant are manifestly unsustainable and the same hereby stand scuttled down. Resultantly, I am inclined to the view that the judgment and decree under attack dated 30.8.1999 rendered by Mr. Chander Hass, Civil Judge, Junior Division, Faridabad are not smacked of illegality or infirmity from any angle and the same hereby stand affirmed."

6. Still dissatisfied with the judgment and decree impugned, the present appeal.

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

8. It was submitted on behalf of the appellant that it is established on record that plaintiff is in possession of the suit property since 1954. When he is in established possession, in these circumstances, suit of the plaintiff can always be decreed. This plea of the appellant cannot be accepted. The specific case set up by the appellant before the trial court was that Gram Panchayat of the village Tilpat had allotted 133 square yards of the land to him out of Khasra No. 148 (8 kanals 18 marlas). The appellant has not placed on record any document of title or the resolution of the Gram Panchayat regarding the allotment of the disputed land nor there is any evidence to the effect that the Gram Panchayat had jurisdiction or authority of the State Government for the allotment of the land to the present appellant or his predecessors. Moreover, there is no mutation on the basis of Grant. The name of the plaintiff also does not figure in any jamabandi or khasra girdawaris.

For the reasons recorded above, there is no merit in this appeal, Dismissed.

9. Appeal dismissed.