

(2013) 07 P&H CK 0409

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1676 of 1986

Shri Rajwant Singh

APPELLANT

Vs

Shri Mohinder Pal and Another

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0409

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Aftab Singh Bakshi, for the Appellant;

Final Decision : Dismissed

Judgement

K. Kannan, J.—The following substantial questions of law arises for consideration in the second appeal:-- 1. Whether the plaintiff is entitled to a decree for injunction even in the absence of proof that the property was an evacuee property and that the order of sale made by the Managing Officer was later set aside by the higher authority and remitted for fresh consideration?

The suit for injunction was filed by the plaintiff against the defendant with reference to property in Khasra No. 2154-58, claimed by him as having been obtained by means of a sale from the Managing Officer of the Rehabilitation Department. The plaintiff contended that the possession was held by him by fencing the property around and paying rent to the State. The original sale according to him had been made for Rs. 13752/- and the plaintiff had also paid the portion of sale consideration. The suit was contested by the defendant contending that the property was not situate in Khasra No. 2154-58 but it was situate in Khasra No. 2134-38 and that the property was in his possession. At the trial, the evidence was brought to the effect that the original order of sale made by the Managing Officer had been set aside on an appeal filed by the defendant contending that the transfer made to the plaintiff was wrong and the property was not really an evacuee property at all. According to him, the portion of the

property in Khasra No. 2134-38 comprised of a well and it belonged to a Hindu and yet another portion of property belonged to a Muslim Wakf. After considering the rival contentions of parties, the Settlement Commissioner directed that the matter shall be considered by the Managing Officer, Amritsar by visiting the property in Khasra No. 2134-38/8-B and take a decision after affording opportunity to both parties.

2. The appeal had been disposed of on 31.01.1983 and the suit had been filed for injunction on 09.02.1983 that is immediately after the disposal of the appeal by the Settlement Commissioner. At the time of trial, it was elicited in the cross-examination of the plaintiff that the case had been still pending before the authorities and final decision had not been taken. Since the plaintiff had filed the suit only for injunction and his own assertion to the property as having been allotted to him by the Rehabilitation Department had not concluded, he sought to establish his claim for possession by examining PW-2 who was the Naib Tehsildar (Sales), who had brought the record relating to payment of rent by the plaintiff and he had given evidence to the effect that the plaintiff had actually been in possession of the property. PW-3 was the Kanungo Sales and his evidence was with reference to the fact that the property that had been sold was with reference to Khasra No. 2134-38 and the plaintiff had paid a part of consideration. He had also brought record of the property bearing Khasra No. 2154-58 and in the site plan of Khasra No. 2154-58, on the one side there was a house of the plaintiff and on the other side, there was a shop of one Roshan Lal. The property was described in its linear measurements of 40" along the bazar side and 39" on the back side and on the side of Roshan Lal's property the measurement was 46" and on the side of Shori Lal, the measurement was 47". He claimed that he had brought the records for the property claimed by the defendant and as per the records, the property comprised of an extent of 204 sq. yards. He also stated that he had inspected the property for verification and it bore out on the spot that it was an evacuee property but he could not however tell the name of the muslim who was the owner of the property and who had vacated the property. He denied the suggestion that the property in dispute was wakf property and that the property was situate only in Khasra No. 2134 where there existed a well. He denied also the suggestion that the property in Khasra No. 2134-38 was a part of the property in Khasra No. 2154-58. From the evidence of PW-2 and PW-3, it is revealed that the plaintiff was seen to be in possession of the property although it is not clear from the records as to what had ultimately happened to the proceedings relating to the sale in favour of the plaintiff. Surely it had not concluded at the time of the trial and I have no better materials now.

3. At least I am convinced that the defendant who was making a claim in respect of the same property was setting up the rival claim with reference to Khasra No. 2134-38 and not with reference to property which was claimed by the plaintiff as being in possession namely the property in Khasra No. 2154-58.

4. Learned counsel appearing on behalf of the appellant pleads with passion that the Court cannot make out a case for plaintiff which was not pleaded by him. According to him, if the suit had sought for injunction on the basis that the property was held by him under a sale from the Rehabilitation Department and if the sale was set aside, the Court cannot grant injunction. This contention would obtain credence if the sale had been set aside and it had become final. If the suit itself had been filed for declaration of title and for injunction then the fact that the sale had not been effected would also lead to a situation that the plaintiff could not obtain injunction. However, the suit in this case was for the bare relief of injunction and all that was necessary was to see whether the plaintiff had been in possession of the property or not and whether the plaintiff had better title or not. The defendant was actually making a claim with reference to some other khasra number and his own effort in challenging the original sale effected to the plaintiff had not come full circle. He was successful in appeal to the extent of having the sale set aside and securing a remand for fresh consideration. The outcome of the fresh consideration was not brought at the time of trial and evidently it had not been concluded at that time. The Appellate Court had set aside the decree of dismissal and granted an injunction only on the basis of the evidence given by the plaintiff and the witnesses relating to the possession and on the observation that the defendant was making a claim to the property which was different from the property which is described in suit with reference to the khasra number and the location of the property. There was no confusion at the trial about the nature of property which was claimed by the plaintiff as being in his possession. The nature of description of the property by reference to all the owners on the four sides had been spoken to by PW-3, Kanungo. The relief of injunction has followed a finding regarding possession by the Appellate Authority on the basis of evidence tendered before it which is essentially a question of fact. The question of law raised is answered to the effect that the bare relief of injunction could be sustained in favour of the plaintiff even in the absence of proof of title, so long as the defendant has no better title. I do not find any merit in the second appeal and it is dismissed.