

Kulwant Singh Vs. Karnail Singh

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Court : Punjab and Haryana

Decided On : Sep-28-1999

Reported in : (2000)125PLR201

Judge : R.L. Anand, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2

Appeal No. : Regular Second Appeal No. 173 of 1980

Appellant : Kulwant Singh

Respondent : Karnail Singh

Advocate for Def. : Deepak Thapar and; Vikas Jain, Advs.

Advocate for Pet/Ap. : P.S. Kang and; G.S. Sidhu, Advs.

Disposition : Appeal dismissed

Judgement :

R.L. Anand, J.

1. This is a defendant's appeal and has been directed against the judgment and decree dated 26.9.1979 passed by Addl. District Judge, Ludhiana who affirmed the judgment and decree dated 27.10.1978 passed by Sub-Judge, 1st Class, Jagraon, who decreed the suit of the plaintiff-respondent Karnail Singh.

2. The case set up by the plaintiff is that the vacant site fully described in para No.1 of the plaint situated at village Akalgarh is his ownership and he is in possession of the same. He purchased the same vide sale deed dated 24.2.1975 registered on 26.2.1975 from one Santokh Singh son of Basawa Singh resident of village Sudhar; and since then he is in possession of the same as owner. He constructed a Kotha in the site in dispute which is adjacent to his house shown in green colour in the site plan attached with the plaint. The water of his house passes through the site in dispute and windows of his house also open towards the site in dispute. Plaintiff has also constructed Khurlies, placed toka-machine and has also constructed varandah besides planting Kikar trees in the site in dispute. The defendant is threatening to interfere in the possession of the plaintiff on the site in dispute and is also trying to dispossess him. Moreover, proceedings under Section 145 Cr.P.C. were also started between the parties. The defendant has no right, title or interest in the site in dispute.

3. Notice of the suit was given to the defendant. The defendant pleaded that plaintiff has no locus standi to file the suit and he is also estopped from filing the present suit by his own act and conduct.' On merit, the plea of the defendant was that Santokh Singh had no right to sell the site in dispute to the plaintiff. Actually Kehar Singh father of the defendant, was the owner of the plot measuring 9-1/2 biswas situated in village Akalgarh. Out of the said property, 4 biswas were sold to the plaintiff and his brother vide sale-deed dated 31.10.1958 registered on 19.3.1959 by Kehar Singh. The remaining 5-1/2 biswas are in actual possession of the defendant as owner and he has been using the property in dispute for storing dung cakes, manure heaps and tethering cattle. There is a boundary wall around the property in dispute. The plaintiff has no right, title or interest in the property in dispute.

4. From the above pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is the owner of the property in suit? OPP

2. Whether the plaintiff is in possession and the suit as framed is maintainable?
OPP

3. Whether the plaintiff is entitled to the injunction as prayed for? OPP

4. Relief.

5. The parties led oral and documentary evidence in support of their respective cases and on the conclusion of the proceedings, the trial Court while deciding issues Nos.1 and 2 held (hat ' in view of the consistent statements, of the witnesses examined by the plaintiff which are further corroborated from the documents produced by the plaintiff on the record, the sole statement of defendant Kulwant Singh to the effect that he. is the owner in possession of the site in dispute cannot be believed. Thus, oral evidence of the plaintiff which has been discussed above coupled with documents Ex.P1, PW7/1, PW7/2 and PW7/3 as well as documents Ex.PW9/2, PW9/3 and PW5/1 clearly goes to show that the plaintiff is owner in possession of the site in dispute. Under these circumstances I hold both these issues in favour of the plaintiff and against the defendant'. Issue No.3 was also decided in favour of the plaintiff and resultantly the suit was decreed.

6. Aggrieved by the judgment and decree of the trial Court, Karnail Singh defendant filed the appeal before the Court of Addl. District Judge, Ludhiana, who for the reasons given in para No.6 of the judgment dismissed the same and aggrieved by the judgment and decree dated 26.9.1979, the present appeal by the defendant.

7. I have heard Mr. P.S. Kang, Advocate, on behalf of the appellant and Mr. Deepak Thaper, Advocate, on behalf of the respondent and with their assistance I have gone through the records of this case.

8. Before I deal with the submissions raised by the learned counsel for the appellant, it will be useful for me to incorporate in verbatim para No.6 of the judgment of the first Appellate Court, which reads as under:-

'6. The evidence adduced by the parties show that the site in dispute and its adjoining plots were originally owned by one Bir Singh, who sold the entire holding of about 16 Biswas to one Badhawa Singh. Badhawa Singh later on sold portions

of the plots vide three sale deeds Ex.PW7/1 to Baggu and others, Ex.PW7/2 to Karnail Singh plaintiff and his brothers and PW7/3 to Narain Singh and his three brothers. The case of the plaintiff is that Wadhawa Singh retained a portion of the plot purchased from Bir Singh, which was subsequently sold to the plaintiff by Santokh Singh son of Wadhawa Singh. It has also come on record that Wadhawa sold a part of plot vide three sale deeds. Kehar Singh s/o Bir Singh filed a suit for declaration against Wadhawas Singh impleading among others Karnail Singh as the defendant. That suit was dismissed. It is admitted case that the present site in dispute adjoins the portion purchased by Karnail Singh plaintiff from Wadhawa Singh vide sale deed Ex.PW7/2. It has come in the statement of Karnail Singh PW that the present site in dispute was left with him by Wadhawa Singh for taking care of the same as Wadhawa Singh did not live in village Akalgarh where the site in dispute is situated and he resided in village Sudhar. However, he subsequently purchased the same site vide registered sale deed from Santokh Singh s/o Wadhawa Singh r/o Sudhar. The defendant Kulwant Singh, who is son of Kehar Singh, has alleged that Santokh Singh had no right sell the site in dispute to Karnail Singh plaintiff. It would be seen that the defendant is the grand-son of Bir Singh, the original owner of the land who had sold the entire Abadi plot to Wadhawa Singh vide original sale deed, copy of which is Ex.P1 on the file and is dated 30.8.1933. It has been duly proved on the file vide statement of PW1 Gulzar Singh the attesting witnesses of the same and the defendant has also not denied the execution of such a sale deed. The defendant led no evidence to prove that Santokh Singh vendor of the disputed site is not the son of Wadhawa Singh vendee from his grand-father Bir Singh. It is also admitted case that the suit filed by the father of the defendant for challenging the alienations by Bir Singh in favour of Wadhawa Singh was dismissed. Even if that suit had been decreed, the vendees would have continued in possession of the same till the death of Bir Singh, It is also proved on the file that Wadhawa Singh has not transferred the entire piece of land after its purchase from Bir Singh vide sale deeds Ex.PW7/1 to Ex.PW7/3, but a part of the plot still remained in his name. The plaintiff Karnail Singh purchased the said site in dispute from Santokh Singh s/o, Wadhawa Singh vide sale deed Ex.P5, which stands duly proved on the file of this case. In these circumstances there is no manner of doubt that Santokh Singh being son of

Wadhawa Singh, had title in the dispute site and could transfer the same because after the death of Wadhawa Singh, his son Santokh Singh inherited the title to the disputed site. The other evidence adduced by the plaintiff further shows that the plaintiff is utilising the site in dispute and is in its effective possession. It is clear from the evidence that the plaintiff has constructed one room, verandah, besides, he has set up a fodder cutting machine and mangers and is tethering his cattle there. The plaintiff has further proved that the site in dispute has boundaries on three sides and on the fourth is his house which open towards the site in dispute. The defendant in his rebuttal evidence, which is oral one, has produced witnesses, who are either inimical, to the plaintiff or do not stay in the village and have little knowledge regarding the site in dispute. DW1 Thakur Singh admittedly did not reside in the village for the last more than 25/30 years. His statement can only be on the information given to him by the defendant regarding the alleged construction of rooms and defendant's possession over the same. He also has not denied the litigation of his cousin brother Gurdial Singh with the plaintiff and pendency of the pre-emption suit between them. DW2 Ganda Singh is admittedly inimical towards the plaintiff because his son Joginder Singh was convicted and sentenced for causing injuries to Ajaib Singh, brother of the plaintiff. The case of the defendant rests only on his own assertions and does not find support from any evidence adduced by him or by the plaintiff.'

9. The learned counsel appearing on behalf of the appellant submitted that it is not proved on the record that the land in question was sold to Karnail Singh plaintiff by Santokh Singh vide sale-deed dated 24.2.1975 registered on 26.2.1975. According to the defendant, this land earlier belonged to Kehar Singh, father of the defendant, who was the owner of the land measuring 9-1/2 biswas situated in village Akalgarh and out of the said property 4 biswas of land was sold to the plaintiff and his brother vide sale-deed dated 31.10.1958 and the remaining 5-1/2 biswas remained in the possession of the defendant.

10. On the contrary, the case set up by plaintiff Karnail Singh is that he purchased the suit property from Santokh Singh. PW1 Gulzar Singh deposed that the sale-deed was executed by Bir Singh in favour of Wadhawa Singh, which is Ex.P1. Bir Singh sold 11-12 biswas of land to Wadhawa Singh, Thakar Singh and Karnail

Singh. Some of the property of Wadhawa Singh remained vacant which was sold to Santokh Singh and then Santokh Singh sold the land to Karnail Singh. This witness also stated that Karnail Singh is in possession of the property for the last 30/35 years. Also it has come in evidence that neither Karnail Singh nor Kulwant Singh occupied the property in dispute. It is also established on the record that while exercising his possession, Karnail Singh installed toka-machine and also constructed a house. Apart from the statement of PW1 Gulzar Singh, there is statement of Kishori Lal PW3, who visited the site in dispute and declared that Karnail Singh was in possession of the property when he prepared the site plan. Also there is an oral statement of other witnesses with regard to the possession of the plaintiff. The plaintiff has also proved his sale deed through the statement of Thakar Singh PW7. According to this witness, Santokh Singh sold the property for a consideration of Rs.1,000/- through sale Deed Ex.PW5.1. Even the plaintiff has supported his case by saying that he has become the owner of the property and the same was in his possession. He has traced out the history of this property by saying that earlier it was owned by Bir Singh, father of Kehar Singh, who is the father of Kulwant Singh defendant. Subsequently, the property came in the hands of Wadhawa Singh. Wadhawa Singh retained a portion of the property measuring 16 biswas and then he further sold the property to Bhago, Narain and Karnail Singh. The property which remained with Wadhawa Singh was purchased by him from his son Santokh Singh and then Santokh Singh sold the property to plaintiff Karnail Singh. In such a situation when a question of fact arises and concurrent finding of fact has gone against the defendant, it will not be proper on the part of the High Court to interfere in the concurrent finding of fact. Be that as it may, but in the present case it is proved on the record that the plaintiff was in established possession on the date of the institution of the suit and he had been exercising his possession on the site in dispute. He has tethered his cattle and had placed Khur-lies. He had installed toka-machine besides he had planted the trees. There was hardly any satisfactory evidence led by the defendant. His mere denial that plaintiff was in possession of the property will not do the matter. The witnesses produced by the defendant are either inimical to the plaintiff or do not belong to his village. DW1 Thakar Singh does not reside in the village for the last more than 25/30 years. DW2 Ganda Singh is inimical to the plaintiff because his son Joginder

Singh was convicted and sentenced for causing injuries to Ajaib Singh, who is none else but the real brother of Karnail Singh plaintiff.

In this view of the matter, I am not inclined to disturb the concurrent finding of fact of the Courts below and seeing no merit in this appeal dismiss the same with no order as to costs.

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