

Mohan Singh Vs. Kewal Ram and Another

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Court : Himachal Pradesh

Decided On : Mar-29-2011

Judge : V.K. Ahuja, J.

Acts : Code of Civil Procedure (CPC) (C.P.C) - Section 100

Appeal No. : RSA No. 392 of 2000

Appellant : Mohan Singh

Respondent : Kewal Ram and Another

Advocate for Def. : Mr. Ramakant Sharma, Adv.

Advocate for Pet/Ap. : Mr. Romesh Verma, Adv.

Judgement :

1. This Regular Second Appeal under Section 100 C.P.C. has been filed by the appellant/defendant against the judgment and decree of the Court of learned District Judge, Sirmour, dated 11.4.2000, vide which he had affirmed the judgment and decree passed by the learned Sub Judge, Rajgarh, dated 11.11.1999, decreeing the suit of the respondent for permanent prohibitory injunction in his favour and as against the appellant.

2. Briefly stated, the fact of the case are that the respondent as plaintiff filed a suit for permanent prohibitory injunction as against the appellant hereinafter referred to

as defendant No. 1 and as against respondent No. 2 who was impleaded as defendant No. 2 and against one Gurdial Singh.

1. Whether reporters of Local Papers may be allowed to see the judgment?
Yes.

3. Briefly stated, the facts of the case as alleged by the plaintiff are that he is exclusive owner in possession of the land comprised in Khasra Numbers 1372/1102/442/2 and 1376/1105/443/2, measuring 17.06 Bighas. He alleged that in the last week of July, 1997, the defendants damaged crop of the plaintiff as well as grass of the plaintiff by letting loose their cattle in the suit land on 31.7.1997.

It was alleged that the defendants are openly threatening to dispossess the plaintiff from the suit land, for which a report was also lodged with the police. Hence, the suit for injunction filed by the plaintiff.

4. In the written statement filed by defendant No. 1 he took preliminary objections in regard to maintainability, estoppel etc. On merits, he pleaded that the replying defendant alongwith his brother and sisters are in possession of the suit land in dispute as owner and the plaintiff never came in possession of the suit land. He pleaded that the land is a part of bigger Khasra No. 1102/442/2 and 1105/443/2 and 1103/442 total measuring 52.2 Bighas and the entire land was owned and possessed by Kirpa, father of defendant No. 1 and Parsa and Meena, who were uncle of defendant No. 1. The father of the plaintiff had 1/3rd share.

Parsa and Meena had also 1/3rd share. It was pleaded that on the death of his father, defendant No. 1 and his brothers and sisters succeeded to the share of their father and possessed the same on the spot. Meena Ram was taken to Rajgarh by the plaintiff and made to sign some papers and in connivance with the Sub Registrar, sale deed was prepared in regard to the share of Meena Ram, whereas no possession was delivered by Meena to the plaintiff. It was pleaded that an application for partition was filed by the plaintiff and partition was carried out on papers and no warrant of possession was executed at the spot.

Therefore, the order of partition and ejectment are wrong and illegal and defendant is not bound by the same. Thus, it was pleaded that the plaintiff is not entitled to the relief of an injunction.

5. On the pleadings of the parties, the following issues were settled by the learned trial Court:-

1. Whether the plaintiff is the owner in possession of the suit land? ... OPP
2. Whether the defendants are interfering without any right, title or interest over the suit land? ... OPP
3. Whether the suit of the plaintiff is not maintainable? ... OPD
4. Whether the plaintiff has concealed the material facts from this court, if so, its effect? ... OPD
5. Whether the plaintiff is estopped by his acts, conducts, and acquiescence from filing the present suit? ... OPD
6. Whether the order of the partition is without jurisdiction and in violation of the principle of natural justice? ... OPD
7. Relief.

6. Parties led their evidence and the learned trial Court vide its impugned judgment decided all the issues in favour of the plaintiff and against the defendants and consequently, decreed the suit of the plaintiff. On appeal, those findings were affirmed by the learned District Judge vide its judgment and decree, which are under challenge.

7. I have heard the learned counsel for the parties and have gone through the record of the case.

8. The appeal was admitted by this Court on the following substantial questions of law:-

“1. Whether the findings as recorded by both the courts below are vitiated on account of mis-reading and mis-appreciation of pleadings of the parties, oral and documentary evidence on record?

2. Whether, for want of filing appeal against the order of partition passed by Ld. Assistant Collector, the present Appellant is precluded from assailing validity of the partition proceedings before the civil court?

3. Whether, sale-deed on behalf of Meena uncle of appellant in favour of plaintiff on the grounds of misrepresentation of facts and by playing fraud has not been considered and determined by the courts below and therefore, findings are vitiated? “

9. The submissions made by the learned counsel for the appellant in support of the appeal and the substantial questions of law framed were that the appellant was never served in the partition proceedings and the plaintiff was not proved to be in possession of the suit land. It was also submitted that the suit should have been filed for declaration since there was disputed question of title and in the absence of relief of declaration having been claimed, the suit for injunction could not have been decreed.

It was also submitted that the learned trial Court gave its findings on title also, which issue was never there and the learned District Judge had not discussed the evidence oral and documentary and as such, the findings recorded by the learned District Judge cannot be said to be in accordance with law since there was no detailed discussion of the oral and documentary evidence led by the parties.

10. On the other hand, the submissions made by the learned counsel for respondent were that the plaintiff had been proved to be owner in possession by way of sale deed executed by the previous owner in favour of the plaintiff. The plaintiff applied for partition. The appellant was a party to the same and

accordingly on conclusion of the partition proceedings, the document of partition was prepared and thereafter, warrant of possession was also issued and the plaintiff got the possession in pursuance of the warrant of possession issued in his favour. It was also submitted that no specific challenge had been made to the sale deed executed in favour of the plaintiff by the defendant in his written statement and he never claimed any relief that the sale deed in question was not binding upon the parties. Thus, when the question was not raised, it was not required of the Court to have recorded the findings in regard to ownership or to have referred the parties to claim the relief of declaration in regard to ownership. It was submitted that the possession of the plaintiff was duly proved and as such, he was rightly held entitled to the relief.

In regard to the discussion made by the learned District Judge, it was submitted that the brevity was there in the judgment of the learned District Judge and the mere fact that the brevity was there does not lead to the conclusion that the evidence has not been discussed properly by the appellate Court. Thus, once there are findings of both the Courts below in regard to ownership and possession of the plaintiff, which do not suffer from any infirmity, therefore, there is no merit in the appeal filed by the appeal.

11. Coming to the first question raised by the learned counsel that the appellant was never served in the partition proceedings. A reference can be made to the written statement filed by the appellant before the learned trial Court in which he had simply alleged in Para-2 of the written statement that the partition was carried merely on papers, the warrant of ejectment was never executed at the spot and an application for partition was allowed without following the proper procedure and law governing the partition. The fact that the partition proceedings took place and that the appellant was also a party to those proceedings has not been specifically denied by the appellant. A perusal of Ext. P-7, notice issued to the appellant, will show that the appellant was a party to those proceedings. A perusal of Ext.P-8 will show that warrant of possession was issued. A perusal of Ext. DX notice issued will show that the appellant was a party to the partition proceedings pending before the Assistant Collector 1st Grade. A perusal of Ext. D-8, mode of partition, will also show that the appellant was respondent No. 2 in those proceedings.

A perusal of Ext. PW1/19 order of the Assistant Collector 1st Grade, will also show that the appellant was a party to those proceedings and there are also other documents on record. It is also on record that as per Ext. PW1/28 that an appeal was filed against those orders by Devi Singh and the appellant was also a party to those proceedings. Thus, it is clear that the appellant was a party to those proceedings. Notices were issued to him and in one of the appeal filed by other co-owners, he was also impleaded as a party. There was no challenge to the fact that he was not served in those proceedings and the appellant never made out a case before the learned trial Court that he was not duly served or record of the said case was proved to show that he had no knowledge of those proceedings.

Once he was a party to all the proceedings referred to above and he never filed any appeal or revision against the order of partition passed by the Assistant Collector 1st Grade, he is precluded from challenging those orders before the Civil Court once he has not filed an appeal or revision against the order of Assistant Collector 1st Collector as permitted by law. Therefore, he has no case to challenge the partition proceedings as was submitted during the course of arguments.

12. In regard to the fact that warrant of possession was issued as per Ext. P-8, there is ample proof on record that the possession was delivered to the plaintiff and in view of the documentary evidence on record, the learned District Judge had rightly concluded on the basis of evidence by referring to the testimony of defendant and other witnesses that the oral evidence is not sufficient to rebut the documentary evidence proved on record that the possession was delivered to the plaintiff. In regard to the fact that the previous owner Meena appeared in the witness box as PW-1 and denies that any possession was delivered to the plaintiff, his statement was not material in view of the fact that he had admitted his signatures on the sale deed and the documentary evidence proved on record that the possession was delivered. It does not lie in his mouth to claim that the sale deed was a result of misrepresentation. Once he has admitted his signatures on the sale deed, it was required of the defendant to have claimed a declaration in regard to the validity of the sale deed, which issue was never claimed or decided

by the learned trial Court.

13. Coming to the submission of the learned counsel for the appellant, reliance was placed upon the decision of the Apex Court in *Anathula Sudhakar v. P. Buchi Reddy (Dead) By LRs. & Ors.*, 2008(3) CIVIL COURT CASES 294 (S.C.), that to claim the relief of injunction the plaintiff has to prove that he was in lawful possession of the suit property and the defendants tried to interfere or disturb the said lawful possession. It was also observed that issue of title when it evolves complicated or complex questions of fact and law or where Court feels that parties had not proceeded on the basis that title was at issue, the Court should not decide the issue of title in a suit for injunction. Proper course is to relegate the plaintiff to the remedy of a full fledged suit for declaration and consequential reliefs.

14. A perusal of the record shows that the plaintiff had filed the suit for injunction and accordingly on the basis of the pleadings of the defendant in his written statement issue was framed that as to whether the plaintiff is the owner in possession of the suit land. No challenge was made to the validity of the sale deed in favour of the plaintiff executed by the previous owner and rightly no issue was framed in that regard. There was no occasion for the Court referring to the parties to the Civil Court for determination of the title. Once the question of title was also raised in the pleadings and issue was framed in regard to ownership, the Civil Court was only forum to decide that question. Once an issue has been framed in regard to ownership, it could have been said that the plaintiff should get this question determined. No issue could have been framed upon the question as to whether the sale deed was not valid, since there was no challenge to the sale deed in this manner by the defendant and accordingly, no issue was framed.

15. Coming to the question that the learned District Judge has not discussed the evidence in detail. Brevity is required to be there in its judgment. But that does not lead to an inference that the learned District Judge had not referred to the oral and documentary evidence. Thus there was no occasion to refer the oral and documentary evidence but in view of the submissions made and substantial questions of law framed, I have referred to the evidence in brief and have come to the conclusion that there is no merit in the appeal filed by the appellant and the

findings of the learned trial Court upheld by the learned District Judge are based upon the correct appreciation of facts and law and these do not call for an interference by this Court.

16. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the appellant and the same is accordingly dismissed, so also the pending miscellaneous application(s), if any. However, the parties are left to bear their own costs.

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