

CASE NO.:
Appeal (civil) 7294 of 2001
Special Leave Petition (civil) 20399 of 2000

PETITIONER:
MOHAN LAL

Vs.

RESPONDENT:
NIHAL SINGH

DATE OF JUDGMENT: 18/10/2001

BENCH:
D.P.Mohapatro, S.N.Patil

JUDGMENT:

D.P.MOHAPATRA, J.

Leave granted.

The defendant has filed this appeal challenging the judgment of the High Court of Punjab and Haryana dismissing the second appeal filed by him and confirming the judgment and decree passed by the Courts below decreeing the suit.

The respondent herein filed the suit for a decree of permanent injunction restraining the appellant from dispossessing him from the suit land described in para No.1 of the plaint and from interfering with possession of the plaintiff over the suit land bearing khewat No.269 khata No.373 Rect No.77 Killa No.2 (7-11), 3(7-11), 8(8-0), 9(8-0) total measuring 31 Kanals 2 marlas situated within the revenue estate of village Harsaru tehsil and district Gurgaon, in any manner without notice to and knowledge of the plaintiff. In the alternative the plaintiff prayed that in case the defendant succeeds in dispossessing him from the suit land during pendency of the suit a decree for mandatory injunction for restoration of possession of the suit land may be granted in his favour.

The case of the plaintiff, sans unnecessary details, was that he got the suit land under a lease for a period of 99 years from the defendant vide the registered lease deed dated 21.6.1971 and since then he is in possession of the property.

The case pleaded by the defendant on the other hand was that he had purchased the suit land from one Mohan Lal under the registered sale deed dated 23.6.1971 and in order to save the land from any pre-emptive claim of relations of the vendor he had executed the lease deed in favour of the plaintiff who is his brother-in-law. According to the defendant the said lease was a paper transaction; it was not given effect to and he (defendant) remained in possession of the suit land all along.

The trial court considering the pleadings of the parties framed several issues of which issue No.1 is whether the plaintiff is a pattadar of the agricultural land mentioned in paragraph 1 of the plaint; and if so to what effect ? The issue No.2 was whether the plaintiff is entitled to the relief of injunction as claimed for.

On appreciation of the oral and documentary evidence led in the case the trial court held that the defendant purchased the suit land including the tube-well existing thereon by the sale deed dated 23.6.1971 and he is the owner of the same; whereas possession of the plaintiff is as a lessee and thus answered both the issues in favour of the plaintiff and against the defendant. The trial court decreed the suit for injunction and restrained the defendant from interfering with possession of the plaintiff over the suit land except in due course of law.

On appeal by the defendant the District Judge, Gurgaon on a fresh assessment and appreciation of the oral and documentary evidence led by the parties held that possession of the plaintiff over the suit land is recorded in the entries of the Jamabandi and Khasra Girdawari upto the period, Khariff 1987 while the present suit was instituted on 22.3.1988. The lower Appellate Court further held that from the evidence adduced on record it was fully established that the plaintiff had not surrendered his possession nor given up his tenancy rights in favour of the defendant on the basis of the cancellation deed Exh.DW2/1 as claimed by the defendant; rather from the evidence it is established that he continuously remained in possession of the suit property from the date of execution of the lease deed. The lower appellate court upheld the findings of the trial court on all issues and dismissed the appeal.

In the second appeal filed by the defendant the High Court took note of the contentions raised on behalf of the appellant that since the plaintiff was not in actual physical possession of the suit land on the date of the institution of the suit, the suit for injunction was not legally maintainable. Judging the contention in the light of the concurrent findings recorded by the Courts below which were based on the revenue records and the oral evidence led in the suit, the High Court declined to interfere with the judgment and decree passed by the Courts below and dismissed the second appeal.

Shri T.L. Viswanatha Iyer, learned senior counsel appearing for the appellant reiterated the contention that since the plaintiff was not in actual physical possession of the suit land the suit for a decree of permanent injunction simplicitor was not maintainable. Elucidating the point learned senior counsel submitted that the defendant after purchasing the suit land had constructed a house on a portion of it and had dug a tube-well thereon. In such circumstances, the learned counsel submitted, it cannot be held that the plaintiff was in possession of the suit land.

The question of possession of the suit land is essentially one of fact. As noted earlier, the trial court on appreciation of the oral and documentary evidence on record declined to accept the case of the defendant that the lease deed executed by him in favour of the plaintiff was a mere paper transaction and that he (defendant) had remained in possession of the property all along. The trial court recorded a positive finding based on the revenue records and the oral evidence led by the plaintiff that he had

come into possession of the land under the lease deed and continued to possess the same all along. The lower appellate court, which is the final Court of fact, confirmed the finding of the trial court regarding plaintiffs possession over the suit land and upheld the judgment of the trial court decreeing the suit. Before the High Court the contention that was raised related to the question of possession. There was hardly any scope for the High Court to interfere with the finding of possession concurrently recorded by the Courts below within the limited parameters of section 100 of the Civil Procedure Code. As the second appeal did not involve any substantial question of law the High Court rightly dismissed the same. In the result, this appeal being devoid of merit, is dismissed. No costs.

..J.
(D.P.Mohapatra)

..J.
(Shivaraj V. Patil)

New Delhi
Dated the October 18, 2001

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