

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.3519 of 1987 (O&M)

Date of decision: 28th January, 2015

Pyara (deceased) through LRs

... Appellants

Versus

Dalip and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. C.B. Goel, Advocate
for the appellants.

Mr. Surender Dhull, Advocate
for the respondents.

FATEH DEEP SINGH, J.

In this third round of litigation the plaintiff/appellant through this regular second appeal has challenged the judgment and decree dated 05.08.1987 passed by the learned Additional District Judge, Karnal reversing the findings of the learned Sub Judge (1st Class) Karnal dated 12.06.1986 who had earlier decreed the suit of the plaintiff.

Upon hearing Mr. C.B. Goel, Advocate for the appellants; Mr. Surender Dhull, Advocate for the respondents and perusing the records of the case.

It is admitted case of the contesting sides that the plaintiff Piara and defendants Dalip, Arjan and Krishan are co-sharers of land measuring 411 Kanals 11 Marlas duly described and depicted in the head note of the plaint situated in village Ruksana, Tehsil and District Karnal. The plaintiff claims that he is owner and in possession of 8 Kanals of this land prior to the year 1956 whereas defendants have set up the plea that though plaintiff is in actual possession of 8 Kanals of land but not in Khasra No.16/2 and therefore, was not entitled to any possession.

The trial Court out of the pleadings framed the following issues:

1. Whether the plaintiff is owner in possession of the suit land comprised in Khasra No.16/2? OPP
2. Whether the plaintiff has got no locus standi to file and maintain the present suit? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is not properly valued for the purposes of Court fee and jurisdiction? OPD
5. Whether the plaintiff has got no cause of action to file the present suit? OPD
6. Relief.

On behalf of the plaintiffs, Pyare Lal plaintiff testified as PW1 and examined in corroboration PW2 Rattna and PW4 Ghayal Singh and proved copy of Khasra Girdawari for the year 1981-82

Ex.P1; orders of Assistant Collector Grade II dated 18.05.1983 Ex.P2; certified copy of the order of AC Grade II dated 08.02.1984 Ex.P3 and closed the evidence.

On the other hand, defendant Arjan testified as DW-1 and proved documents, copy of orders dated 22.12.1982 of AC Grade II Ex.D1, Khasra Girdawari for the year 1981-82 and 1982-83 Ex.D2, copy of Khasra Girdawari for the year 1981-82, 1982-83 and 1983-84 Ex.D3; copy of orders dated 01.03.1983 of AC Grade II Ex.D4 and consequent thereupon these two findings were recorded in contradiction to each other and that is how the parties are before this Court.

The following substantial question of law arises in this appeal for consideration:

Whether the impugned findings are wrong interpretation of the evidence and the law, if so, to what effect?

It is by now well entrenched law that the plaintiff is supposed to stand on his own legs and cannot by any means take advantage of the weaknesses of the case of defendants. Reliance in this regard can be placed upon '**Rangammal v. Kuppuswami and another**' reported in **AIR 2011 SC 2344**

Mr.C.B. Goel on behalf of the appellants and so Mr.Surender Dhull for the respondents agree to the proposition of law that in a simplicitor suit for permanent injunction question of title cannot be gone into and findings, if any, are only for the purpose of

decision of the injunction aspect. It is own pleadings of the plaintiff as has been pointed out on behalf of the respondents that the plaintiff and the defendants are co-sharers of the property detailed in the head note of the plaint and thus, by that analogy in view of the Full Bench view of our own High Court in '**Bhartu v. Ram Sarup**' 1981 PLJ 204 each of the co-sharers is owner as well as in possession of each inch of the joint co-sharer property unless and until there is evidence that the other side has acquiescenced and over a long period of time one of the parties who claims so is in exclusive possession to which the others have acquiescenced. Though it is stand of the plaintiff that he is in possession of the property in question prior to the year 1956 and not even a single document has been proved on the record from the revenue record to support that aspect. The lone document Ex.P1 pertains to Khasra Girdawari for the year 1981-82, Ex.P2 application for correction of Khasra Girdawari, Ex.P3 is an order of AC Grade II pertaining to this correction and wherein keeping in view at that juncture the fact that the Civil Court is already seized of the matter. Similarly, Ex.D1 is an application for correction of Khasra Girdawari whereas Ex.D2 is in sharp contradiction to Ex.P1 which is a Khasra Girdawari pertaining to the year 1981-82, 1982-83 and so the fact of Ex.D3 Khasra Girdawari for the year 1981-82, 1982-83 and 1983-84 which shows that Khasra No.16/2 measuring 8 Kanals is cultivated by Gehlu Aad and similar are the orders of AC Grade II Ex.D4 which do not lead to any consequential effects. The oral testimony of the plaintiff Pyara shows that in his examination in chief he states that he is in

possession of the land in question and the other party is trying to take forcibly possession. As has been pointed out on behalf of the respondents in his cross-examination he accepts that the land in question is joint and that they have divided the land and it is not there in his cross-examination that Khasra Girdawaris pertain to which of the land. Similar is the statement of PW2 Rattna and PW3 Ghayal Singh. The most important statement is of Arjan defendant that out of the land measuring 51/52 acres and that after their settlement each of the parties is in possession and occupation as owner in respect of their own shares and has further submitted that the land in question regarding which suit has been filed was more than the share of the plaintiff and that he had at one point of time wrongly got the Khasra Girdawari sanctioned in his name and similarly nothing is evolved out of the statement of DW2 Pawan Kumar.

Though with much vehemence Mr.C.B. Goel on behalf of the plaintiff has sought to argue that by virtue of this admission by the defendant he is entitled to injunction does not impress this Court much. As it has been laid down in **Rangammal's case** (ibid) the plaintiff cannot take advantage of the weaknesses of the defendant's case and since to the very query of the Court Mr.C.B. Goel could not point out any tangible evidence of plaintiff's possession exclusively and to the exclusion of other co-sharers and a single entry that too which is not supported by subsequent entries does not factually determine the case in favour of the plaintiff. Any stray entry cannot be considered as legitimate and the evidence has to be supported by

consistent entries or independent corroboration in this regard which are not forthcoming.

The trial Court without adjudicating upon issues in the light of the evidence led before it has come to a wholly unjustified conclusion and which has been rightly set aside by the first appellate Court that on the basis of such an admission of PW3 it cannot be said and held that the plaintiff is in exclusive possession of the property in question. Since none of the three essential prerequisites of prima-facie case, balance of convenience and irreparable loss are in favour of the plaintiff. The suit is even barred by the provisions of Section 41(h) of the Specific Relief Act, 1963 as more efficacious remedy is available to the plaintiff. More so, being an equitable relief which is based on pure discretion of the Court which is to be exercised on sound judicial principles debars this Court from coming to the aid of the plaintiff whose stand even otherwise apparently is not truthful and bona fide.

The impugned findings of the first appellate Court thus need to be upheld and there being no merit in the instant appeal the same stands dismissed with no costs.

(FATEH DEEP SINGH)
JUDGE

January 28, 2015
rps