

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 3919 of 2010 (O&M)

DATE OF DECISION : February 13, 2015

Jagtar Singh & anr.

.....APPELLANT(S)

VERSUS

Bhupinder Singh & anr.

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

**Present: Mr. Rajinder Goyal, Advocate, for the appellants.
Mr. RS Athwal, Advocate, for the respondents.**

...

1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

...

ARUN PALLI, J. (Oral)

Suit filed by the plaintiffs was partly decreed by the trial Court vide judgment and decree dated 25.07.2009 and defendants were restrained from raising any construction or changing the nature of the property or causing dispossession of

the plaintiffs from a land comprised in Khasra No.52 (2-1), situated at Village Khanpur, Tehsil and District Fatehgarh Sahib. However, their suit qua injunction vis-a-vis Khasra No.53 was dismissed and the injunction was declined. Resultantly, defendants preferred an appeal against the said decree and even plaintiffs preferred cross-objections as the 1st appellate court dismissed the appeal as well as cross-objections vide a judgment and decree dated 11.05.2010. It would be apposite to point out here that plaintiffs have not chosen to prefer any appeal against the decree passed by the 1st appellate court and, thus, defendants are before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, the plaintiffs prayed for a decree for injunction restraining the defendants from raising any construction or changing the nature of the land comprised in Khasra No.52 (2-1) and Khasra No.53 (5-3) and also from dispossessing the plaintiffs from joint possession and enjoyment of suit property. It was averred that land comprised in Khasra No.52 was jointly owned and possessed by father of the plaintiffs; namely, Kundan Singh, and defendants. As Kundan Singh has since passed away, the land comprised in Khasra No.52 was jointly owned and possessed by the parties to the lis. Khasra No.53 adjoins Khasra No.52, the same happened to be the custodian property and the same was also in joint possession of the parties. It was maintained that the suit property was still joint and had not been partitioned. Since

defendants threatened to oust the plaintiffs from the suit land, thus, the suit.

In defence, it was pleaded, inter alia, that plaintiffs had no concern with the suit property. It was averred that Khasra No.52 (2-1) was previously owned and possessed by Harnam Kaur, grandmother of the plaintiffs and mother of the defendants, along with other property, which was Gair Mumkin abadi. It was maintained that Harnam Kaur was residing with the defendants and on account of the services rendered by the defendants, she executed a Will dated 14.01.1993 in favour of the defendants and father of the plaintiffs; namely, Kundan Singh. As a result, a land measuring 8 kanals only was given to the father of plaintiffs, except Ruri, Abadi, Taur and residential property. Mutation, pursuant to the said Will, was also sanctioned in favour of the beneficiaries of the Will. Defendants had, thus, become owners in possession of Khasra No.52 and other property of Harnam Kaur. As regards Khasra No.53 (5-3), it was maintained that the same was in possession of the defendants and they had constructed a septic tank and a shed for tethering cattle in the said land.

On a consideration of the matter in issue and the evidence on record, the courts below found that the judgment dated 28.07.1992 (Exhibit P2) revealed that the property comprised in Khasra No.52 (2-1) was recorded to be jointly owned and possessed by the defendants and father of the plaintiffs i.e. Kundan Singh, who happened to be the real brother of the defendants. No appeal was preferred against the said

decree and, thus, the same attained finality. Nothing was brought on record to show as to how Harnam Kaur was competent to transfer the property by way of a Will in the year 1993 as the Will in question was purported to have been executed on 14.01.1993 and the judgment in the aforesaid suit was rendered on 28.07.1992. Further, Jamabandi for the year 2003-04 also showed that the said land was jointly owned and possessed by the father of the plaintiffs and the defendants, the position that was in sync with decree dated 28.07.1992. And, that being so, mutation order (Exhibit D3), Mutation (Exhibit D4) and the entries recorded in the Jamabandi for the year 1998-99, were of no consequence. However, as regards Khasra No.53 (5-3), plaintiffs failed to lead any cogent evidence to show as to how they were in possession of the said property. Khasra Girdawari (Exhibit D6) proved the possession of the defendants upon the said land. Accordingly, the suit filed by the plaintiffs was partly decreed and the defendants were enjoined from changing the nature and character of the land comprised in Khasra No.52 (2-1) by raising any construction or interference in the use and enjoyment of the plaintiffs. However, as regards Khasra No.53 (5-3), the suit was dismissed. Resultantly, the appeal preferred by the defendants and the cross-objections filed by the plaintiffs were dismissed by the 1st appellate court.

I have heard the learned counsel for the parties and perused the records.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts

below and rejected after a due and comprehensive consideration. No other argument has been advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, vide judgment and decree dated 28.07.1992 (Exhibit P2), Kundan Singh, father of the plaintiffs, and defendants were held to be joint owners in possession of the land comprised in Khasra No.52 (2-1). Thus, post death of Kundan Singh, who happened to be the real brother of appellants (defendants), parties to the lis became joint owners in possession of the suit property. And were bound by the judgment and decree dated 28.07.1992. It is not disputed that the said decree attained finality between the parties as the same was not assailed any further. Once that was so, nothing was brought on record to show as to how Harnam Kaur was competent to transfer the land comprised in Khasra No.52 (2-1), vide a Will dated 14.01.1993. Jamabandi for the year 2003-04 reveals that the land in question was recorded to be jointly owned and possessed by the father of the plaintiffs and the defendants, a position that was never questioned by the defendants. Thus, albeit, needless to assert, once parties to the lis were joint owners in possession, defendants were rightly enjoined from changing the nature and character of the suit property by raising any construction, as it would amount to ouster of a co-sharer.

Learned counsel for the appellants could not point out as to how the conclusions that have concurrently been recorded by both the courts below were either contrary to the position on record or suffer from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is, accordingly, dismissed.

FEBRUARY 13, 2015
Kang

(ARUN PALLI)
JUDGE