

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

RSA No.41 of 2011(O&M)
Date of decision: 11.02.2015

Karnail Singh and another

...Appellants

Versus

Love Kishore

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Deepak Arora, Advocate for the appellants.

Mr. RD Sharma, Advocate for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was decreed by the trial court vide judgment and decree dated 10.10.2006. Appeal preferred against the said decree failed and was dismissed on 15.09.2010. This is how, 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, plaintiff prayed a decree for injunction, restraining the defendants from causing any interference in the peaceful possession of the plaintiff over a land measuring 3 kanals 14 marlas, comprised in khewat No.343, khasra No.141 min charda, situated at village Sarti Khas, Tehsil Dhar Kalan, District Gurdaspur. It was averred that original Punni

Devi widow of Diwan Chand, mother of the plaintiff, had filed a suit against the defendants, as they threatened to dispossess her from the suit land. The said suit was withdrawn by Punni Devi on account of a formal defect with the permission to file afresh on the same cause of action. However, subsequently Punni Devi passed away. But as defendants again threatened to dispossess the plaintiff, from the suit property and demolish his residential house, thus, the suit.

In defence, it was pleaded, inter alia, that the suit filed by the plaintiff suffered from principle of res judicata. It was denied that the plaintiff was in possession of the suit property. In fact, it was maintained that the suit land was owned and possessed by the defendants, pursuant to a sale deed. However, it was admitted that a suit filed by the mother of the plaintiff was withdrawn, as a compromise was effected between her and the defendants. And it was agreed that a land measuring 5 marlas would be given to her for constructing a residential house i.e. the house the plaintiff was living in. And the remaining land out of the suit property was handed over to the defendants, that was earlier under cultivating possession of the mother of the plaintiff as tenant. But as the defendants came to know that the entries in the record of rights, defendants despite being in possession, were still continuing in the name of the plaintiff, they filed an application for correction of khasra girdawari before the Tehsildar, Pathankot,

and that was still pending. It was denied that defendants ever threatened to forcibly dispossess the plaintiff. Accordingly, defendants prayed for dismissal of the suit.

On a consideration of the matter in issue and the evidence on record, the courts below found that the plaintiff was recorded to be in possession of the suit property as tenant. In reference to certain decisions rendered by this court in **Samma Singh v. Thakar Singh 1997(1) RCR 299** and **Sat Pal Singh v. Jarnail Singh 2004(2) LJR 676**, it was concluded that though defendants placed reliance upon the orders, Ex.D1 & Ex.D2, vide which khasra girdawaris were ordered to be corrected in their favour, but as the application for correction of khasra girdawari was moved by the defendants on 16.07.2004, and the present suit was instituted on 10.06.2004, thus, these orders having been passed during the pendency of the suit could not be looked into. Still further, plaintiff was recorded to be in possession of the suit land as a tenant. And no evidence was led by the defendants to prove the termination of tenancy. No order by a competent court of law, was brought on record to show that plaintiff was ever ejected from the suit land. So much so, one of the witnesses of the defendants i.e. Dharuv, DW2, conceded that plaintiff was in actual physical possession of the suit land. He also testified in his cross-examination that the residential house of the plaintiff was constructed upon the suit property.

Likewise, Subash Singh, DW3, also admitted in his cross-examination, that when he purchased the suit land, the same was in possession of Punni Devi. And she used to cultivate the suit land. Further, Punni Devi happened to be the mother of the plaintiff. Jamabandi for the year 2002-03, Ex.P1, khasra girdawari from Sauni 2002 to Haari 2003, Ex.P3, and electricity bills, Ex.P7 to Ex.P23, prove the possession of plaintiff i.e. Love Kishore, over the suit property. That being so, the suit filed by the plaintiff was decreed. Appeal preferred against the said decree failed and was accordingly dismissed.

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

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

Per contra, learned counsel for the respondent (plaintiff) submits that the entries in the record of rights duly proved the possession of the plaintiff over the suit property. He further submits that the orders passed by the revenue authorities, vide which the entries in khasra girdawari were ordered to be corrected, could hardly advance the case of the defendants, as even the application in this regard was moved by the defendants subsequent to the institution of the suit on 16.07.2004.

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. Statement of the plaintiff (PW3) and his witnesses i.e. Rattan Chand (PW1), Rajesh Kumar (PW2) and Paras Ram (PW4), prove the possession of the plaintiff. Concededly, jamabandi for the year 2002-03, Ex.P1, khasra girdawari from Sauni 2002 to Haari 2003, Ex.P3, and electricity bills, Ex.P7 to Ex.P23, substantiate that plaintiff indeed is in actual physical possession of the suit property. The records show that concededly, the mother of the plaintiff was in possession of the suit land as a tenant. And post her death, plaintiff was shown to be in possession as gair dakhilkar tenant. Nothing was brought on record to prove that tenancy in favour of the plaintiff was ever terminated. No order by a competent court of law, was brought on record to prove the eviction of the plaintiff. Witness examined by the defendant i.e. Dharuv (DW2), testified that the plaintiff was in possession of the suit land and he had even constructed a house upon the suit property. Orders, Ex.D1 & Ex.D2, passed by the revenue authorities were hardly of any consequence in law, as the application for correction of khasra girdawari was moved by the defendants on 16.07.2004 i.e. post filing of the suit on 10.06.2004. Learned counsel for the appellants could not

point out as to how the conclusions that were concurrently recorded by both the courts were either contrary to the position on record or suffered 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. Appeal being devoid of merit is, accordingly, dismissed.

February 11, 2015
Rajan

(Arun Palli)
Judge