

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

RSA No. 5129 of 2011 (O&M)

Date of decision : 21.8.2015

Smt. Basan

... Appellant

versus

Habib and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: None for the appellant.

Rajesh Bindal, J.

One of the defendants is in second appeal impugning the judgments and decrees of the learned courts below, whereby the suit filed by respondent no.1/plaintiff for permanent injunction, was decreed.

In the case in hand, respondent no. 1/plaintiff filed a suit for permanent injunction stating that he is in peaceful possession of the suit land of the share of Uday Singh, who was co-sharer/co-owner with other co-sharers, continuously and regularly. Uday Singh had left the land and its possession more than 30 years ago. The suit land is still joint between the plaintiff and defendant nos.12 to 16. Defendant no. 2 to 11 wanted to grab the property in dispute. Defendant nos.2 and 3 in collusion with defendant no.1, have executed sale-deed dated 13.11.2006, in respect of some portion of land. Defendant no.4 has executed sale-deed dated 15.1.2007 in favour of defendant no.1 of some portion of land. The aforesaid sale-deeds were executed on the basis of mutation dated 3.8.2006. As the defendants were trying to interfere in the peaceful possession of the plaintiff, he filed suit, which was decreed by the learned Trial Court. The appeal filed by the appellant/ defendant no.1, was dismissed. She is now in appeal before this Court.

No one has appeared for the appellant. Ever since the appeal was filed, the same is being adjourned either on request of counsel for the appellant or due to absence of the counsel.

It is not the case of the appellant that respondent no. 1/plaintiff is not in possession of the land. The plaintiff has proved that he is in actual physical possession of the suit land for the last more than 30 years. In the jamabandis, Ex.P9 to Ex.P14, and also in khasra girdawari, Ex. P15, the plaintiff has been shown in possession of the share of Uday Singh. Whereas, the appellant has not produced on record any document to prove her possession or the title or possession of defendant nos. 2 to 11, from whom she has allegedly purchased the property. Defendant nos. 2 to 11 had tried to get mutation entered in their favour on two occasions but failed. The appeal filed by them before the Collector was also dismissed on 10.12.2009 (Ex. P22). Uday Singh is still the owner of the land in dispute. The learned Lower Appellate Court has rightly observed that the plaintiff has a right to retain his possession till he is dispossessed by the true owner in due course of law.

Considering concurrent findings of fact recorded by both the courts below, I find no merit in the present appeal. No substantial question of law arises. Accordingly, the appeal is dismissed. Reference can also be made to judgment of Hon'ble the Supreme Court in Poonam vs Sumit Tanwar, 2010 (4) SCC 460.

21.8.2015
vs

(Rajesh Bindal)
Judge