

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

RSA No.3338 of 2012 (O&M)

Sarabjit Singh and others

...Appellants

Versus

Gurdev Singh and others

...Respondents

(2)

RSA No.3339 of 2012 (O&M)

Sarabjit Singh and others

...Appellants

Versus

Gurdev Singh and others

...Respondents

Date of Decision: July 09, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gurcharan Dass, Advocate
for the appellants.

INDERJIT SINGH, J.

Both the above-mentioned RSAs are taken up together being arisen from same judgments and decrees passed by the Courts below.

Appellants-defendants Sarabjit Singh and others have filed both the above-mentioned regular second appeals against Gurdev Singh and other respondents-plaintiffs, challenging the impugned judgment and decree dated 05..08.2010 passed by learned Addl. Civil

Judge (Senior Division), Dhuri, vide which the suit filed by the plaintiffs-respondents for permanent injunction was decreed and also the judgment and decree dated 01.06.2012 passed by learned Addl. District Judge, Sangrur, vide which the appeal filed by the defendants-appellants was dismissed.

The brief facts of the case are that plaintiff Sukhwinder Singh, now represented through his LRs, filed a suit against defendants Malook Singh and others mainly stating therein that plaintiff is owner in possession of abadi property and has been using the same for placing fuel wood, cow-dung etc. The defendants have got no right, title or interest in the suit property and they are threatening to raise construction over the same.

Upon notice, the defendants filed written statement-cum-counter claim taking legal objections regarding the maintainability of the suit. It is further pleaded that the suit property was allotted to the predecessors in interest after migration from Pakistan to India in lieu of the property left by them in Pakistan and the plaintiff is neither the owner nor in possession of the suit property. The plaintiff has not been using the same for any purpose. It is also pleaded that previous khasra number of the suit property was 1648 as per jamabandi for the year 1945-46. Earlier the property was in possession of Mohammedans. The defendants were enrolled as voters in the said Abadi. The house being katcha was demolished in 1984-85 and residential house was constructed in the agricultural land. It is further alleged that Sukhminder Singh raised dispute with the predecessors

of the defendants regarding the ownership of the suit property and to settle the dispute amicably, they paid ₹1000/- to Sukhminder Singh plaintiff who in turn executed a writing in the Bahi regarding the sale and delivery of possession. The defendants have also filed the counter claim on these facts and prayed for decree declaring Malook Singh to be the owner in possession of Abadi land measuring 18 biswas comprised in Khata No.91/128, Khasra Nos.2302/1/0-2 and 2302/2/0-16 situated in the revenue estate of village Rajomajra. The counter claimant has also claimed the relief of permanent injunction restraining the plaintiff Sukhminder Singh from interfering in the peaceful possession of the counter claimant and his sons over the suit property.

After framing the issues and after considering the evidence produced by the parties, learned Addl. Civil Judge (Senior Division) Dhuri decreed the suit filed by the plaintiff and defendants were restrained from interfering or dispossessing the plaintiffs forcibly and illegally vide judgment and decree dated 05.08.2010 and the counter-claim of the defendants was dismissed. An appeal was filed by the defendants before learned District Judge, Sangrur and learned Addl. District Judge, Sangrur vide judgment and decree dated 01.06.2012, dismissed the appeal.

Aggrieved from the above-said judgments and decrees by the Courts below, both the above-mentioned RSAs have been filed by the appellants-defendants for dismissing the suit filed by the plaintiffs and for allowing the counter claim filed by the defendants.

I have heard learned counsel for the appellant and have gone through the record.

From the record, first of all, I find that the defendants have specifically taken the plea that property in dispute is previously bearing khasra No.2302/1/0-2 and 2302/2/0-16 and their case is that as per the jamabandi for the year 1945-46, this property was bearing khasra No.1648. No evidence on record has been produced by the defendants to show that khasra No.1648 is now changed to khasra No.2302/1/0-2 and 2302/2/0-16. There is no revenue record to prove this fact nor there is any cogent evidence on record to prove the same. Secondly, I have gone through Ex.D7 in the lower Court record. From this document also, it cannot be held that property which the defendant No.1 is claiming as allotted to the predecessors of the defendant, is the same suit property. No site plan has been brought on record to prove the dimensions of the property nor any such dimensions have been mentioned in this allotment letter Ex.D7. As per the jamabandis Ex.P1, P2, P4 and P5, the property is shown to be in the possession of the plaintiff as discussed by learned Addl. Civil Judge in the judgment and decree. In these jamabandis, the plaintiff has been shown owner of the property.

Next, I find that the defendants are also relying upon one document vide which the settlement has taken place between Sukhminder Singh and the defendants after payment of ₹1000/-. The perusal of this document shows that the said writing was executed between Giana Singh and Darbara Singh on one side and

Sukhminder Singh on the other side. There is nothing on the record as to how the defendants are connected with Giana Singh and Darbara Singh. As per the allotment letter Ex.D7, the property was allotted to Malook Singh, Shisha Singh sons of Ghasita Singh. Defendant Malook Singh has stated it was allotted in the name of their predecessors. Both the parties have led oral evidence but statements of the PWs have been duly supported and corroborated by the documentary evidence and defendants have failed to prove their counter claim by connecting the suit property with the property allotted to them nor their oral statements are supported by any cogent documentary evidence.

The perusal of the record shows that both the Courts below have correctly appreciated the evidence on record and judgments and decrees passed by the Courts below are correct and as per law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in this appeal. Neither there is anything on the record to show that any evidence has been misread or has not been appreciated in right perspective nor there is anything on record to show that the findings of the Courts below are perverse.

Therefore, finding no merit in the present regular second appeals, the same are dismissed.

July 09, 2015
Vgulati

(INDERJIT SINGH)
JUDGE