

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

RSA No. 3417 of 2012 (O&M)

Date of decision : 1.12.2015

Dhal Singh and others

.. Appellants

versus

Gangoo and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Yash Paul Khullar, Advocate, for the appellants.

Rajesh Bindal, J.

The plaintiffs have impugned the judgments and decrees of both the Courts below whereby the suit filed by them for declaration and possession was dismissed.

The plaintiffs filed the suit alleging that they are owners in possession of the agricultural land detailed in the plaint. It was alleged that the defendants in connivance with the revenue authorities got the revenue record fabricated and manipulated in their favour, whereas the property in dispute was recorded in the ownership and possession of the plaintiffs upto 1979-80. However, in subsequent jamabandis for the years 1983-84 to 1998-99 in column 5, defendant Dal Chand (since deceased) in connivance with the revenue authorities got his name entered as *gair morusi*. It was alleged that the suit land was never leased out to the defendants. By taking undue advantages of the wrong entries, they are trying to dispossess the plaintiffs from the suit land. The claim of the defendants is that they are owner in possession of the suit property. The suit land was purchased by their father from Bhanwar Singh, father of the plaintiffs, on 24.9.1982 (Ex.DX). Prior to purchase, defendant Dal Chand was in possession of the suit land as a tenant under Bhanwar Singh. Entire sale consideration of ₹ 5,000/- was paid to him vide receipt dated 24.9.1982 (Ex. DY) and possession of the suit land was delivered to defendant Dal Chand as he has performed his part of the agreement. Both the Courts below dismissed the

suit filed by the appellants opining that on the basis of evidence produced by the appellants, it could not be opined that defendant Dal Chand in collusion with revenue officials has got entered his name in the column of possession as *gair morusi*. Besides this, to prove the agreement to sell dated 24.9.1982 (Ex.DX), the defendants examined DW1 Jai Kishan, attesting witness, who admitted his signature on the agreement to sell, whereas the plaintiffs denied the execution of agreement to sell, however, to disprove the thumb impression of their father on the agreement to sell and receipt dated 24.9.1982, no expert evidence was led by them. They miserably failed to discharge the burden of this issue, onus of which was on them. It was rightly opined by the learned courts below that when it had been duly established on record by the defendants that in performance of agreement to sell dated 24.9.1982, their father had already made payment of entire sale consideration to Bhanwar Singh, father of the plaintiffs and had also taken the possession of the suit property on the basis of agreement to sell, the defendants are entitled to protect their possession under Section 53-A of the Transfer of Property Act, even if the suit for specific performance is barred by limitation.

Learned counsel for the appellants could not refer to any evidence produced by the appellants, which has either been misread or not considered on the issue while dismissing the claim of appellant. Hence, the findings to that effect cannot be said to be perverse.

For the reasons mentioned above, I do not find any merit in the present appeal. No question of law much less a substantial question of law arises in the appeal. The same is accordingly dismissed.

1.12.2015
vs

(Rajesh Bindal)
Judge