

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.3794 of 2012 (O&M)

Date of Decision: 07.05.2015

Kartar Singh and another

..... APPELLANTS

VERSUS

Karamjit Singh and another

..... RESPONDENTS

PRESENT: - Mr. Vivek Rattan, Advocate
for the appellants.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the 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?

SHEKHER DHAWAN, J.

Prayer has been made for condonation of delay of 46 days in filing the present appeal.

In view of the grounds mentioned in the application, the same is allowed. Delay of 46 days in filing the appeal is condoned.

The defendants have preferred the present Regular Second Appeal against judgment and decree dated

28.09.2011 whereby appeal filed against judgment and

decree dated 17.05.2008 passed by the Civil Judge (Jr. Divn.), Dhuri was dismissed.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiffs had filed suit for decree of permanent injunction in respect of house in question thereby restraining the defendants from demolishing any part of the constructed house of the plaintiffs and for restraining the defendants from dispossessing the plaintiffs from said property forcibly.

As per the plaintiffs, they are co-owners in exclusive possession of the suit property, which finds recorded in the revenue record. They have constructed their residential house in the suit property 15 years back and since then are residing therein. The defendants without any right, title or interest are threatening to demolish the house in question and to dispossess the plaintiffs.

The defendants contested the suit on the ground that the suit property owned by Gram Panchayat being shamlat land. Otherwise the plaintiffs have no

concern with the same. They had never threatened to demolish the house of the plaintiffs or to dispossess them. However, Gram Panchayat is demolishing the house. They have no concern with the suit property and, as such, the suit be dismissed.

On these facts, the Court of first instance settled the following issues and put the parties to trial:

1. Whether the plaintiffs are entitled for permanent injunction restraining the defendants from demolishing any part of the constructed house of the plaintiffs? OPP
2. Whether plaintiff are entitled for permanent injunction restraining the defendants from dispossessing the plaintiffs from any part of the land fully described in the head note of the plaint? OPP
3. Whether plaintiffs have no cause of action or locus standi to file the present suit? OPD
4. Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD
5. Whether G.P. is owner in possession of the suit property? OPD
6. Whether the defendants have no concern with the suit property? OPD
7. Whether plaintiff has dragged the defendants into unnecessary litigation? OPD
8. Relief.

The trial Court after considering the material

and evidence available on file decreed the suit of the plaintiffs thereby restraining the defendants from demolishing the house of the plaintiffs and from dispossessing the plaintiffs from any part of the suit property.

The defendants preferred the first appeal but remained un-successful and, as such, the second appeal before this Court.

Mr.Vivek Rattan, learned counsel for the appellants took the plea that as per jamabandi, the suit land is 'Patti land'. The plaintiffs are transpassers on the said land and as such, they are not entitled to seek any injunction. More so, the Gram Panchayat should have been impleaded as party in this case but that has not been done. Both the Courts below have completely ignored these facts while passing the judgment and decree under challenge and the same be set aside.

Having considered the submissions made by learned counsel for the appellants and perusal of record reveals that the concurrent findings recorded by both the Courts below establish that the plaintiffs are in possession of the suit property and their possession finds recorded in the revenue record including khasra girdawari Ex.P-2. The plaintiffs have been able to prove on the record that their house exist over the suit property. More so, the defendants

have admitted in the pleadings that they have no concern with the suit property. Otherwise law on the point is settled that any person who is in established possession of the suit property cannot be dispossessed forcibly and illegally. Both the Courts below while considering the same evidence and keeping in view the proposition of law regarding protecting the established possession passed the decree and First Appellate Court dismissed the first appeal. There is absolutely no substantial question of law involved in this case calling for interference by this Court while entertaining second appeal under Section 100 of the Code of Civil Procedure and as per law laid down by Hon'ble Supreme Court in **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs.**, 2001(2) JT 407.

In view of the above, the present appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 07, 2015
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