

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

-.-

**RSA No.3636 of 2013 (O&M)
Decided on : January 13, 2015**

Sohrab

... Appellant

Versus

Mahinder Partap and another

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Virender Rana, Advocate, for the appellant.

Mr. Amit Jain, Advocate, for the respondents.

Mahavir S. Chauhan, J. (Oral)

Judgment/decreed dated 02.06.2012 of the Court of learned Additional District Judge, Nuh ('First Appellate Court' for short) affirming judgment and decree dated 16.03.2011 of learned Additional Civil Judge (Senior Division), Ferozepur Jhirka ('trial court' for short) is under challenge in this Regular Second Appeal brought by the defendant No.1 Sohrab. Both the Courts below have decreed suit of the plaintiffs for permanent injunction.

Stated in brief, the case of the plaintiffs (respondents herein) before the Courts below was that they are owners in possession

of agricultural land, as per details given in Para 1 of the plaint. In fact, respondent No.2 had purchased mortgagee rights in respect of land bearing rect. No.37, Killa no.7/4 (1-14), 14/2 (4-17), 15/1(1-0) to the extent of 34/456th share vide registered sale deed bearing vasika no.1012 dated 24.09.2007 and since then, he is continuing in possession of the suit land. The respondents have also installed a "bonga" in the suit land and have been in continuous possession thereof.

The suit was contested on behalf of the appellant by filing a written statement wherein all the allegations of the plaint were denied and it was pleaded that all the defendants including the appellant were in cultivating possession of the suit land as gair marusi and that his possession has been continuous and un-interrupted as he has neither been ejected from the suit property nor he ever surrendered possession thereof.

From the pleadings of the parties following issues were framed:-

1. Whether the plaintiffs are entitled to the decree of permanent injunction as prayed for?OPP
2. Whether suit of the plaintiffs is not maintainable? OPD
3. Whether the plaintiffs have no cause of action

to file the present suit?OPD

4. Whether plaintiffs concealed true and material facts from the court? OPD

5. Whether the plaintiff is estopped from filing the present suit by this own act, conduct etc?OPD

6. Relief.

In support of their claim, one of the respondents, namely, Mahinder Partap appeared as PW1 but the appellant did not bring any evidence in spite of repeated opportunities. Evidence of the appellant, therefore, was closed by order of the Court.

On appraisal of the evidence and after hearing the parties, learned trial Court came to the conclusion that the respondents were able to prove their possession over the suit land as mortgagees and the appellant could not rebut the same as no evidence was led on his behalf. Accordingly, the suit brought by the respondents was decreed. The appellant also failed in appeal before Ist Appellate Court.

I have heard learned counsel for the parties.

Though, it is argued by learned counsel for the appellant that the respondents have examined only one witness and the Courts below have committed an error of law by relying upon the uncorroborated evidence of PW1 Mahinder Partap but Section 134 of

Indian Evidence Act, 1872 states that no particular number of witnesses shall, in any case, be necessary for the proof of a particular fact or say, the evidence has to be weighed and non-counted. From perusal of the impugned judgment, it comes out that the respondents (plaintiffs) before the learned trial Court have proved on record Exhibit P1 vide which they purchased the mortgagee rights and respondent-plaintiff Mahinder Patrap while appearing as PW1, has very specifically stated that the respondents have been continuing in possession of the suit property since the purchase of the mortgagee rights. As aforesaid, appellant has not been able to bring any evidence, whatsoever, to rebut the evidence brought forth on behalf of the respondents.

Further, the findings recorded by the Courts below are pure findings of fact and no question of law, much less a substantial one, is shown to be involved in this appeal.

In view of the above, I am not inclined to interfere with concurrent and pure findings of fact recorded by the Courts below.

Dismissed.

13.01.2015
anju rani

[Mahavir S. Chauhan]
Judge