

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.1027 of 2015 (O & M)

Date of Decision: *November 03, 2015*

Gurpreet Singh & others

..... PETITIONERS

VERSUS

Avtar Singh & another

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of 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?

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PRESENT: - Mr. Vinod Khunger, Advocate, for the appellants.

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Jaspal Singh, J

1. The instant appeal has been preferred by defendants – Gurpreet Singh & others challenging judgment and decree dated October 09, 2012 passed by the trial court as well as judgment & decree dated December 04, 2014 passed by the lower appellate court, whereby the suit instituted by plaintiffs – Avtar Singh & another, seeking relief of permanent injunction and restraining the defendants from interfering into peaceful & continuous possession of plaintiffs over land fully detailed in the plaint, has been decreed and appeal filed by the defendants dismissed by the lower appellate court.

2. While assailing the impugned judgments & decrees passed by both the courts below, it has been ebulliently argued by learned counsel for the appellants that the same are absolutely against the evidence available on record and settled canons of law. Mis-appreciation of the evidence has resulted into mis-carriage of justice. Both the courts below have ignored and disbelieved the credit worthy evidence brought on record by the appellants – defendants to establish that the suit land is joint ancestral property in the name of Dial Singh and further that previously an oral family settlement took place between the family members of Dial Singh. On the basis of the aforesaid family settlement, the land in question fell into the share of defendant Nos.1 and 2. Since then, they are in actual physical possession thereof, though ownership continued in the Record of Rights in the name of Dial Singh. After the family settlement, the appellants – defendants raised construction of two shops on the land measuring 2 kanals 11 marlas adjoining to the main road whereas in the remaining portion of the plot as well as adjoining plot measuring 1 kanal 5 marlas, eucalyptus trees were planted besides sowing of crop in between the trees. The plaintiffs succeeded in procuring the sale deed/transfer deed, alleged to have been executed by Dial Singh, only to defeat the rights of the appellants – defendants. The said sale deed/transfer deed is illegal, null and void. No doubt, Dial Singh was co-owner in the land measuring 6 kanals 2 marlas but he neither sold nor executed the registered sale deed/ transfer deed in favour of the plaintiffs. Infact, they have nothing to do with the land measuring 1

kanal 5 marlas since the plaintiffs are neither owner nor in possession of the property in suit. The findings recorded in this regard by the trial court and upheld by the lower appellate court are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal. Consequently, suit of the plaintiffs deserves to be dismissed in toto.

3. After bestowing due consideration to the aforesaid submissions made by learned counsel for the appellants and scrutinizing the impugned judgments & decrees passed by the courts below, this Court is of the considered view that submissions made by learned counsel for the appellants do not carry any legal weight and are unsubstantiated one.

4. The plaintiffs – respondents have asserted their claim over the suit property on the basis of the sale deed/ transfer deed executed by Dial Singh with regard to the suit land. Mutation on the basis of sale deed/ transfer deed has already been incorporated and sanctioned in favour of the plaintiffs. Thus, on the basis of registered sale deed/ transfer deed, plaintiffs have become owners of the property in question. Moreover, execution of the sale deed/ transfer deed in favour of the plaintiffs by Dial Singh has been admitted by the defendants though they have alleged that the said sale deed/ transfer deed has been brought into existence just to defeat the rights of the defendants in the suit property.

5. Here, it would be pertinent to mention that Harpreet Singh, while appearing in the witness box as DW-2 has admitted in

clear terms that his grand father namely Dial Singh had transferred the suit land vide transfer deed/ sale deed in favour of the plaintiffs. So, in such circumstances, mere non-examination of Dial Singh would not be fatal to the case of the plaintiffs, particularly when execution of the sale deed/ transfer deed has not been disputed. Moreover, mutation has already been sanctioned on the basis of aforesaid sale deed/ transfer deed in favour of the plaintiffs.

6. It is also important to note here that there is a motive behind the controversy initiated by defendants when they started extending threats qua the ownership and possession of the plaintiffs over the suit property. Defendant No.3 is the daughter-in-law of Dial Singh, original owner, whereas defendant Nos.1 and 2 are the sons of defendant No.3. During the cross examination of defendant No.3, it has cropped up that she was having dispute with her husband Davinder Singh, whose marriage has ended in divorce. The defendants have also miserably failed to record any document to show that property in the hands of Dial Singh was ancestral property or that a family partition has taken place amongst the family members of Dial Singh or that the suit land fell to the share of the defendants. Bald assertion of the defendants in this regard is not suffice to hold that they are owners in possession of the suit property on the basis of any such family settlement. Even the family settlement, so propounded by the defendants, has not seen the light of the day what to talk of its incorporation in the revenue record or sanctioning of mutation on the basis thereof. It is well settled proposition of law that until and unless

the family settlement/ partition alleged to have been effected between co-sharers has been affirmed by the revenue officials. As per the provisions of Section 130 of the Punjab Land Revenue Act, 1887, it has no evidentiary value and cannot be relied upon. Thus, this Court is of the considered view that lower court as well as lower appellate court have rightly concluded that respondents – plaintiffs are owners in possession of the property in suit and are entitled to the decree for permanent injunction, prayed for by them.

7. In the light of what has been discussed above, this Court does not find any infirmity, illegality or impropriety in the impugned judgments & decrees passed by the courts below. As such, the instant appeal is dismissed. However, the parties are left to bear their own costs.

November 03, 2015
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(Jaspal Singh)
Judge