

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

RSA No.940 OF 2013 (O&M)
DATE OF DECISION : 11th AUGUST, 2015

Veerpal Kaur

.... Appellant

Versus

Jalandhar Singh & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Jasmail Singh Brar, Advocate for the appellant.

Mr. S. K. Arora, Advocate for the respondents.

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SURINDER GUPTA, J. (ORAL)

CM-2593-C-2013, CM-2594-C-2013 and CM-2595-C-2013

Along with appeal the applications have been filed to produce on record the Jamabandi for the year 2004-05 as additional evidence. The learned counsel for the respondent has no objection if application bearing No.CM-2595-C-2013 is allowed and taking on record the Jamabandi for the year 2004-05 Annexure P-1 as additional evidence. He submits that to rebut this documentary evidence respondent has not produced any evidence.

The applications bearing No.CM-2595-C-2013 is allowed as prayed for and Annexure P-1 is taken on record as additional evidence. Other two applications bearing No.2593-C-2013 and 2594-C of 2013, being formal, are also allowed.

Main Case

The plaintiff-Darbara Singh, now represented by his daughter appellant-Veerpal Kaur filed suit seeking the relief of permanent injunction to restrain the defendants from interfering in his peaceful possession over land measuring 30 kanals out of the land measuring 64 kanals as fully defined in the headnote of the plaint. Defendant No.1-Scheduled Caste Land Owning Society, Deep Singh Wala, (in short, Society) admitted the claim of plaintiff and his possession over the land measuring 30 Kanals. However, Jalandhar Singh-defendant No.2 contested the claim of plaintiff alleging that in the garb of this suit the plaintiff wanted to grab the land in possession of defendant No.2. He alleged that earlier his father Makhan Singh was in possession of the suit land and thereafter he came to be in possession of the same.

The pleadings of the parties lead to the framing of issues as follows:

- (i) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP
- (ii) Whether the present suit is not maintainable? OPD-2
- (iii) Whether no notice under Section 77 of Punjab Co-op Societies Act has been served, if so, its effect? OPD
- (iv) Relief.

The suit was decreed by the Civil Judge, Faridkot with the observations as contained in para 11 of the judgment, which reads as follows:

“11. As the things stand out, the defendant is opposing the case of the plaintiff only by stating that

Partap Singh was not the member of the Society and if he was not the member, then how come Darbara Singh became the member of the Society and thereafter Veerpal Kaur became the member of the Society and on this, defendant is claiming that they are in possession of the land, but to my mind, Darbara Singh plaintiff was member of the Society and this Veerpal Kaur is his nominee, is well proved from Ex. P2, which is the copy of the register of members and in column No.3, Veerpal Kaur is mentioned as the nominee of Darbara singh. So, by this, it is clear that Veerpal Kaur is the nominee of Darbara Singh and Darbara Singh was the member of the Society and as far as possession is concerned, DW Jalandhar Singh is admitting that there is a house of plaintiff in the fields and moreover, Jalandhar Singh defendant No.2 is claiming his right by stating that he is the member of the Society. But as far as his membership is concerned, it is not proved on the file and further the land revenue receipts claimed by defendants never seen the light of the day, as they are not proved on the file. Moreover, who is the owner of the land i.e. the Society and its President is admitting the possession

of the plaintiff over the suit land. So, as far as the argument of the defence that plaintiff was not residing at village Deep Singh Wala is also not convincing as to have a possession over the land, it is not required that a person is required always physically to be present to show his possession.”

Defendant-Jalandhar Singh filed appeal which was allowed on the ground that the plaintiff has not pin pointed 30 kanals out of 64 kanals of land described in headnote of the plaint on which he claim possession. No Jamabandi or khasra Girdawari of the suit land was placed on record. In the resolution of the society Ex.P-11 and P-2 there was no mention that the plaintiff was in possession of the suit land. No record was produced that defendant No.1-Society was owner of the suit land.

Against the judgment of the First Appellate Court the plaintiff has filed this regular second appeal.

I have heard learned counsel for the parties and have perused the case file with their assistance.

As per the Jamabandi Annexure A-1 the Society is recorded as owner in possession of the suit land measuring 64 kanals. This document in no manner helps the plaintiff in her case to prove that she is in possession of any specific portion of the land out of the suit land measuring 64 kanals bearing khasra No. 643, 644, 649 and 650 (area of each khasra number 16 Kanals). The production of this Jamabandi in no manner helps the plaintiff in her case. There is no evidence on record that any portion of

the land in dispute was allotted to the plaintiff by the society. Even the admission of the society is not with regard to any specific portion in possession of plaintiff out of 64 kanals of land. The First Appellate Court has rightly observed that the onus was on the plaintiff to establish his claim and till the land regarding which its decree for injunction has been sought is pin pointed, the relief cannot be allowed to the plaintiff. In the event of such a decree being allowed the same will not be executable. The plaintiff while appearing as PW-1 had also nowhere disclosed as to which portion of the land out of these 64 kanals, is in his possession. There is no purpose of passing a vague decree in favour of the plaintiff even as per the admission of defendant No.1-Society.

On perusal of the paper book and judgment of the first appellate court, I find no legal or factual infirmity therein calling for any interference. No substantial question of law arises for determination in this appeal, which has no merit and is dismissed.

11th August, 2015
'raj'

(SURINDER GUPTA)
JUDGE