

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

**RSA No. 2093 of 2015 (O&M)
Decided on : 13.08.2015**

Pyare Lal and another

... Appellants

Versus

Bhagwan Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Manoj Sharma, Advocate,
for the appellant.

K. C. PURI, J.

The plaintiffs have filed the present regular second appeal against the judgment and decree dated 20.9.2014 passed by Sh. Raj Kumar Yadav, Additional District Judge, Hisar whereby judgment and decree dated 23.11.2010 passed by Sh. Ashwani Kumar, Additional Civil Judge (Senior Division), Hansi was upheld and the appeal of the plaintiffs was dismissed.

The plaintiffs filed suit for mandatory and prohibitory injunction on the allegations that they are owners in possession of suit land vide sale deed No.1605 dated 8.7.2005 which had been executed in their favour by its previous owners, namely, Khem Chand, Subhash Chander sons of Koda Ram etc. and they had sown Jawar crop in the

suit land and the defendants are strangers to the suit property. It has been further averred by the plaintiffs that defendants intended to forcibly dispossess them from the suit land illegally and unauthorizedly and although they had requested them not to interfere in their possession over suit land but they were adamant to do so. Hence, the suit.

On notice the defendants appeared and filed written statement pleading that the plaintiffs have instituted the present suit by suppressing the material facts from the Court. Initially, Paras Ram son of Sh. Mangu Ram was tenant on 1/3rd Batai Tehai over the land in dispute for the last 100 years who had died on 15.10.1983 leaving behind only two daughters namely Chand Tari and Man Kauri. During his life time Paras Ram had adopted Ram Kumar son of Sh. Data Ram as his son and he also expired on 31.3.1996 and at that time he was cultivating the land in dispute on Batai Tehai through Khem Chand and Subhash sons and Smt. Trilok Bai widow of Koda Ram. After the death of Ram Kumar, the suit land was taken on Batai Tehai in the month of May/June 1996 by the father of the defendants No.2 & 3, namely, Risal. It has been further pleaded by the defendants that after taking the land in dispute on Batai Tehai, their father had been cultivating the suit land under the previous owners and Batai Tehai of the suit land had already been paid by their father uptill the crop of Kharif 2005 and later on suit land was sold by the previous owners to the plaintiffs vide sale

defendant No.1 and asked him to pay Batai Tehai to them as they had become owners of suit land and since then their father was making the payment of Batai Tehai to the plaintiffs and now the plaintiffs have instituted the suit only in order to dispossess them from the suit land.

Defendants Ran Singh and Jaibir were proceeded exparte before the trial Court.

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

1. Whether the plaintiffs are entitled for decree of permanent injunction as prayed for by them ?OPP
2. Whether the plaintiffs have no locus standi and cause of action to file the present suit ?OPD
3. Whether the present suit is not maintainable ?OPD
4. Whether the Civil Court has no jurisdiction to try and entrain the present suit ?OPD
5. Relief.

After appraisal of the evidence, learned trial Court dismissed the suit of the plaintiffs vide judgment and decree dated 23.11.2010 passed by Sh. Ashwani Kumar, Additional Civil Judge (Senior Division), Hansi.

Feeling dis-satisfied with the judgment and decree dated 23.11.2010 passed by Sh. Ashwani Kumar, Additional Civil Judge (Senior Division), Hansi, the plaintiffs filed first appeal before

the Additional District Judge, Hisar and the same was dismissed vide

judgment and decree dated 20.9.2014 passed by Sh. Raj Kumar Yadav, Additional District Judge, Hisar.

Still feeling dis-satisfied with the aforesaid judgments and decrees dated 23.11.2010 and 20.9.2014, the plaintiffs have filed the present regular second appeal.

Learned counsel for the appellants, in para no.11 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- (i) Whether the impugned judgment and decree passed by the Ld. Lower Courts is patently illegal, being against the settled proposition of law and require to be set aside ?
- (ii) Whether the Id. Courts below failed to appreciate the defendant evidence which shows nothing in their favour ?
- (iii) Whether the plaintiff is master of suit in a suit for injunction as per the circumstances ?

I have heard learned counsel for the appellants and have gone through the records of the case.

Learned counsel for the appellants has submitted that plaintiffs have purchased the suit property vide sale deed No.1605 dated 8.7.2005 and the vendors have put the plaintiffs in possession of the suit property. The defendants claimed the tenancy over the suit property but have failed to prove the tenancy. So, in these

circumstances, the suit of the plaintiffs should have been decreed. Both the Courts below have committed grave error.

I have carefully considered the said submission but do not find any force in that submission.

Both the Courts below have appreciated the sale deed and other evidence on the file and have reached to the conclusion that plaintiffs have failed to prove their possession over the suit property. The plaintiffs cannot derive the benefit of weakness of the defendants and plaintiffs have failed to prove their case from the evidence. There is concurrent finding that plaintiffs have failed to prove their possession over the suit property. The sale deed has also been appreciated and it has been held by both the Courts below that recital in the sale deed is delivery of possession symbolically i.e. Malkan kabza. There is nothing on the record that said finding is result of misreading or misinterpreting the evidence on the file.

So, I have no hesitation in holding that no substantial question of law has arisen in the present case. Consequently, the appeal is without any merit and the same stands dismissed.

13.8.2015.
SN

(K.C.PURI)
JUDGE

**CM No. 5478-C of 2015 in
RSA No.2093 of 2015**

Pyare Lal and another vs. Bhagwan Singh and others

Present : Mr. Manoj Sharma, Advocate,
for the appellants.

For the reasons mentioned in the application, the
same is allowed and the delay of 136 days in filing the present appeal
stands condoned.

13.8.2015.
SN

(K.C.PURI)
JUDGE