

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2321 of 2015 (O&M)
Date of Decision: May 26, 2015

Smt.Sheona Devi and others

...Appellants

Versus

Chanderpal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.K.Chugh, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-defendants Sheona Devi, Jaideep and Garima have filed this regular second appeal against Chanderpal respondent-plaintiff, challenging the impugned judgment and decree dated 05.12.2014 passed by learned District Judge, Jind vide which appeal, filed against the judgment and decree dated 11.10.2012 passed by learned Civil Judge (Senior Division) Jind, was partly allowed.

The brief facts of the case are that plaintiff-respondent Chander Pal filed a suit against defendants-appellants Sheona Devi, Jaideep and Garima for permanent injunction restraining the defendants from interfering into his peaceful proprietary possession over the suit land. It is mainly stated that plaintiff is owner in possession of agricultural land to the extent of ½ share of land measuring 93 kanals 10 marlas as per jamabandi and residential

house. The defendants are wife and children of the plaintiff and they have no right, title, authority or concern in the suit land. It is further stated that defendants threatened to dispossess the plaintiff for which they have no right to do so.

The defendants contested the suit by filing written statement. It is stated in the written statement that plaintiff is a spend thrift person and having bad habits. Previously, he was owner in possession of the suit property to the extent of $\frac{1}{2}$ share. An oral family settlement had taken place between the plaintiff and defendant and other family members in the month of March 1999. In that settlement, agricultural land was partitioned between the parties. The possession of the suit land has also been delivered to the defendants.

After framing of the issues, both the parties led evidence.

Learned Civil Judge (Senior Division) Jind, after appreciating the evidence, dismissed the suit of the plaintiff vide judgment and decree dated 11.10.2012. An appeal was filed by the plaintiff before learned District Judge, Jind and vide judgment and decreed dated 05.12.2014, learned District Judge, Jind partly decreed the suit for permanent injunction regarding agricultural land and regarding the house the appeal was dismissed.

Aggrieved from the above-said judgment and decree passed by learned District Judge, Jind, present regular second appeal has been filed by the appellants-defendants.

Learned counsel for the appellants, at the time of arguments argued as per the case of the defendants in the written

statement and mainly relied upon the oral partition, in which, as per the counsel, the agricultural property has been given to the defendants.

After hearing learned counsel for the appellants and after going through the record, I find that as per jamabandies Ex.P1 and P2, as discussed by learned District Judge, Jind in his judgment, plaintiff is shown to be owner of the suit property. Otherwise also, in the written statement, the defendants stated that previously plaintiff was owner in possession of the suit property. The defendants have not led any cogent evidence on record to prove the oral family partition. This suit has been filed on 09.06.2009 and the oral family settlement is stated to be of 1999. There is not even a single document on record to corroborate the oral statements of the defendants-witnesses. There is no explanation as to why for the last ten years, this family settlement has not been entered into the revenue record. The defendants mainly relied upon Ex.D1 to D5 i.e. receipts of Abiana. Learned District Judge, Jind had discussed these documents. In these receipts Ex.D1 to D4, there is no mention of the name of the person. It is not clear as to by whom these receipts were issued and on which date. The author of these receipts has not been examined by the defendants. Learned District Judge, Jind further held that these receipts have not been proved as per law. The First Appellate Court held that learned Court below committed grave error by relying upon these receipts. Only receipt Ex.D5 is dated 07.09.2010 but again, it is not clear as to by whom it was issued and

even the khasra numbers of the suit land were not mentioned therein. Therefore, learned District Judge, Jind has rightly ignored these receipts. Learned Civil Judge (Senior Division) Jind has wrongly placed reliance on these receipts. Even these receipts Ex.D1 to D5 have not rebutted the presumption attached to the jamabandi. Otherwise also, there are no particulars regarding the oral family settlement to show whether whole land has been given to the defendants or whether some land has been kept by the plaintiff. If the whole land is given to the defendants, then it also looks improbable. The defendants are wife, son and daughter of the plaintiff. The plaintiff, as per the revenue record, especially jamabandies Ex.P1 and P2, is owner in possession of half share of the suit property and half share is owned by plaintiff's brother.

In view of the above, I find that the judgment and decree passed by the learned District Judge, Jind are correct, as per evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in this appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 26, 2015
Vgulati

(INDERJIT SINGH)
JUDGE