

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2379 of 2015 (O&M)
Date of decision 28.08. 2015.

Joginder Singh and another

..... Appellants.

versus

Gurpreet Singh and others

..... Respondents.

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

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. HPS Ghuman, Advocate for the appellant.

K.C.PURI, J.

C.M. No.12013-C of 2014.

For the reasons mentioned in the application, delay of 199 days in re-filing the appeal stands condoned. CM stands disposed of accordingly.

MAIN APPEAL.

This is an appeal directed by plaintiff/appellants against the judgment and decree dated 29.03.2014 passed by Shri R.S.Rai, Additional District Judge, Gurdaspur vide which the appeal preferred by the defendants against the judgment and decree dated 07.06.2012 passed by Smt Amandeep Kaur Chauhan, the then learned Civil Judge (Junior Division), Gurdaspur

was accepted and the suit of the plaintiffs was dismissed.

2. Brief facts of the present case are that the plaintiffs have filed the suit against the defendants with the averments that the plaintiffs are in physical cultivating possession of the land measuring 2 Kanals as fully detailed and described in the head note of the plaint for the last more than 20 years and previously land in suit was low lying area and plaintiffs made it fit for cultivation spending huge amount and hard labour and the land in suit is situated within the Lal lakir of village, Tehsil and District Gurdaspur. There is a 5 acre of land within the Lal Lakir of the village Amargarh and Plaintiffs are proprietors of the village and land in suit came into the share of the plaintiffs in family settlement between the proprietors of the village and other proprietors are also in possession of other land from the land measuring 5 acre mentioned above which came to their share in family settlement and defendants are in possession of 2.5 acre of land from the land measuring 5 acre mentioned above which is other than the suit land. The defendants have no right, title or interest with the suit land. There is a party faction in the village and plaintiffs belongs to Congress party, whereas the defendants belong to the Akali Dal ruling party. They in connivance with the political leader are threatening the plaintiff to dispossess the plaintiff from the suit land illegally and forcibly. The plaintiff have sown wheat crop in the suit land and even Gram Panchayat of village Amargarh given in writing on 4.11.2008 that plaintiff are in physical cultivating possession of the suit land and Gram Panchayat passed resolution regarding the same. The plaintiff requested the defendants number of times to admit the claim of the

plaintiff but the defendants are adamant and finally refused to do so. Hence this suit.

2. Upon notice defendants appeared through counsel and filed written statement by taking preliminary objections regarding non maintainable, having no cause of action and locus-standi, having not come present to the court with clean hands. On merits, it has been pleaded that the plaintiffs are not even in a possession over an inch of suit land. The plaintiffs are not the proprietors of the village, rather they have migrated to village Amargarh a few years back, so they are not the proprietors of the village. Defendant no. 3 was Sarpanch of the village and filed suit for ejectment before the DDPO, Gurdaspur against Dilip Singh father of Sarpanch Palwinder Singh because he was in illegal and unauthorized possession of the panchayat land. Son of the said Dalip Singh is Sarpanch of village and plaintiff have been nourishing a grudge against the defendants for filing ejectment case against Dalip Singh. Wife of the plaintiff Joginder Singh is also member of panchayat of village and supporter of the Sarpanch, so the plaintiffs have filed a false case against the defendants. The Criminal case between defendant no 1 and plaintiffs is also pending and the present suit is a counter blast to the criminal case. The plaintiffs being party men and relative of Sarpanch might have procured some wrong writing in their favour which are not binding on the defendants. The defendants have sown Kharif crop in the suit land. Other averments have been denied and in last prayer has been made for dismissal.

3. Replication was not filed. From the pleading of the parties following issues were framed : -

1. Whether the plaintiffs are entitled for permanent injunction as prayed for ? OPP
2. Whether the plaintiffs is not maintainable in the present form ? OPD
3. Whether the plaintiffs are debarred from filing the present suit ? OPD
4. Whether the plaintiffs have no cause of action or locus standi for filing the present suit ? OPD
5. Whether the plaintiffs have not come to the court with clean hands and have filed the present suit by concealing the true and material facts from this Court ? OPD
6. Relief.

6. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence decreed the suit of the plaintiff vide judgment and decree dated 07.06.2012.

7. Feeling aggrieved, the defendants preferred First appeal. The learned Additional District Judge, Gurdaspur vide judgment and decree dated 29.03.2014 accepted the appeal of the defendants and dismissed the suit of the plaintiffs.

8. Feeling dissatisfied with the aforesaid judgment and decree dated 29.03.2014, the present regular second appeal has been directed by the plaintiffs/appellants.

9. The appellants in paragraph No.27 of the grounds of appeal, have mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether the findings recorded by the Ld. Appellate Court are not perverse ?
- (ii) Whether the Ld. Appellate Court has not misread and mis-appreciated the evidence on record ?
- (iii) Whether the Ld. Appellate Court was not to decide the case issue-wise ?
- (iv) Whether the findings recorded by the Ld. Trial Court are not to be affirmed ?
- (v) Whether the Ld. Appellate Court can set aside the well reasoned findings of the Ld. Trial Court without assigning any reasons ?
- (vi) Whether it is not a fit case for remand for deciding afresh in the facts and circumstances of the case ?

11. I have heard learned counsel for the appellant and have gone through the case file with her able assistance

12. Learned counsel for the appellant has submitted that Appellate Court has wrongly accepted the appeal. The finding of the trial Court has been set aside wrongly without giving any reasoning. The First Appellate Court has misread and mis-appreciated the evidence on the file. The Appellate Court has not decided the appeal issue-wise.

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

14. The plaintiffs claim themselves to be in possession of the property for the last more than 20 years. The present suit is a clever device to encroach upon the land of the village Panchayat. In the cross-examination PW-2 has categorically stated that he cannot tell with which piece of land, he is in possession. PW-3 Sarpanch of the village is the star witness for the plaintiffs. Wife of PW-1 Joginder Singh is Panch in the

village and this witness is the Sarpanch of the village. It has been admitted by the plaintiffs' witnesses that wife of Joginder Singh plaintiff is a supporter of the Palwinder Singh PW-3. Palwinder Singh PW-3 during his cross-examination has admitted that land in dispute is shamilat-deh. It is very unfortunate that a Sarpanch of the village has come forward to support the false claim of the plaintiffs, who is none-less but is the husband of member panchayat. The land of the Panchayat cannot be allowed to be encroached upon by the plaintiffs as he neither able to prove nor was in possession of the suit property. There is nothing on the record that judgment and decree of the First Appellate Court is the result of misreading and misinterpreting the evidence led by the plaintiffs. It has come on the record that defendant No.3 was Sarpanch of the village and he had filed application for ejectment before the DDPO against Darshan Singh father of sarpanch. Fakir Singh who happened to be PW-3. So, the Sarpanch in order to maintain the encroachment of his father has come forward to support false claim of the plaintiffs. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. Consequently, the appeal is without any merit and the same stands dismissed.

11. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

August 28, 2015

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