

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2697 of 2015 (O/M)
Date of decision : 14.12.2015

Ravi Kumar and others

..... Appellants

Versus

Om Parkash and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.K. Arora, Advocate, for the appellants.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 27.1.2015, passed by the Additional District Judge, Ferozepur, affirming the judgment and decree dated 9.2.2011, passed by the learned Additional Civil Judge (Senior Division), Ferozepur, vide which the suit of the plaintiffs (appellants herein) for possession and mesne profits, was dismissed with costs.

Briefly stated, the plaintiffs/appellants claimed that they are owner of the suit land and defendant No. 1 (respondent No. 1 herein) is in possession of the suit land as tenant. Now,

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defendant/respondent No. 1 has denied the ownership of the plaintiffs/appellants. Therefore, the tenancy stands terminated. Hence, the suit for possession has been filed alongwith mesne profits. The stand of the defendants/respondents before the lower Court was that the land was declared surplus in the hands of big land owners. At that time, Tara Singh son of Surta Singh was in possession of the suit land. He applied to the Assistant Collector 1st Grade, Ferozepur, on 30.11.1970 for purchase of the land. In this way, Tara Singh became the owner in possession of the suit land. The sale deed dated 24.3.1998, on the basis of plaintiffs' claim of ownership, is illegal and has been challenged by Teja Singh etc., who had become the owner of the suit land on the basis of Will, executed by Tara Singh. The lower Court held that the perusal of record shows that in the revenue record, the plaintiffs/appellants are recorded to be co-sharers in the suit land and it is also proved that the plaintiffs/appellants had purchased the suit land, vide sale deed dated 24.3.1998, executed by Amrit Lal Vohra, attorney of Yogesh Kumar, in pursuance to the judgment and decree dated 7.3.1998, passed by the then learned Additional Civil Judge (Senior Division), Ferozepur, but the plaintiffs/appellants are not entitled to decree for possession. It was held that the suit land was declared surplus in the hands of big land-lords and that Tara Singh son of Surta Singh was in possession of the suit land. It was further held that the

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Collector (Agrarian), Jalalabad, has initiated proceedings under Section 9 (2) of the Punjab Land Reforms Act, 1972, for recovery of possession of the surplus land, vide order dated 7.1.1977. The plaintiffs/appellants preferred an appeal against the said order before the Commissioner, Ferozepur Division, Ferozepur, which has been dismissed, vide order dated 9.2.2010 (Ex.DY). It is held that since the Collector (Agrarian), Jalalabad, has already initiated proceedings for recovery of the possession from the plaintiffs on the ground that it has been declared surplus, therefore, no decree for possession can be passed in favour of the plaintiffs/appellants. The findings were affirmed by the first appellate Court.

I have heard the learned counsel for the appellants and have also carefully gone through the file.

After going through the judgments and decrees of both the Courts below, I am of the view that admittedly the land was declared surplus and proceedings for recovery of possession from the plaintiffs/appellants by the State are in progress. The plaintiffs/appellants are successfully resisting the stay proceedings. Infact, now the State is entitled to possession of land.

The learned counsel for the appellants contends that the land was never utilized by the State and possession was not taken. The plaintiffs/appellants have already challenged the order declaring the land as surplus. However, the fact remains that at present, the

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plaintiffs/appellants have already been divested of the ownership. The land has been declared surplus and till the date, plaintiffs/appellants have been successfully resisting the recovery of possession by the State. Now, without making the State as party, they have filed the suit against two of the defendants and want to get back the absolute possession. Therefore, decree for possession was rightly declined by the lower Court. There is no ground to interfere in the findings recorded by both the Courts below. Hence, the present regular second appeal is dismissed.

(KULDIP SINGH)
JUDGE

14.12.2015
sjks