

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

RSA No.3745 of 2015 (O&M)

Date of Decision: August 11, 2015

Shara Singh @ Sardara Singh

...Appellant

Versus

Kapoor Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Manish Prabhaker, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

The present appeal has been preferred by the defendant-appellant against the judgments passed by the Courts below, whereby, the civil suit filed by the respondents-plaintiffs for permanent injunction restraining the defendant-appellant from interfering into their possession or from dispossessing them forcibly, illegally and unauthorizedly from the land as detailed in the head-note of the suit, stands decreed and the appeal preferred by the defendant-appellant against the order of Civil Court, stands dismissed.

It is the contention of the counsel for the defendant-appellant that the plaintiffs-respondents have produced on record the jamabandis and khasra girdawaris (Annexures P-1 to P-3) which are merely showing that they are in possession, however, these jamabandis and khasra girdawaris have been obtained by them in connivance with the revenue authorities. He further states that the plaintiffs-respondents, in their

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cross-examinations, have admitted that they are co-sharers of the property and therefore, would be deemed to be in possession of the said property. Apart from that, he contends that the findings recorded by the Courts below are not sustainable for the reason that it is admitted by Kapoor Singh (PW-1) that Darshan Kaur and Amarjit Kaur, who are the sisters of plaintiffs-respondents, are not in possession of the suit land as they are residing in Bombay with their in-laws and therefore, they could not be in physical possession of the land and the jamabandis and khasra girdawaris, thus, cannot be made the basis of coming to a conclusion that these documents reflect the correct position of the land.

Counsel further contends that as per the jamabandis, the land in possession of the plaintiffs-respondents is said to have been irrigated through a tube-well, whereas, respondents, in their cross-examinations, have admitted that there is no tube-well in the land in dispute which clearly shows that the tube-well which was in the land of the appellant, was being used for the purpose of irrigation of the land which is a subject matter of dispute which establishes the possession of the defendant-appellant. He, on this basis, contends that the judgments passed by the Courts below cannot sustain and deserve to be set aside.

I have considered the submissions made by the counsel for the appellant and with his assistance, have gone through the record of the case but I am afraid that this Court will not be able to accept the contentions as raised by the counsel for the appellant.

Firstly, for the reason that there are concurrent findings

recorded by the Courts below holding the plaintiffs-respondents to be in possession of the land in question and that too, on the basis of the jamabandis and khasra girdawaris (Annexures P-1 to P-3). The assertion of the counsel for the appellant that it is an admitted fact that the appellant is also co-sharer of the property may be correct but the fact remains that the ownership on the land has not been established either on the part of the respondents-plaintiffs or the defendant-appellant and the claim qua that of the plaintiffs-respondents has also been rejected by the Courts below but their possession stands established and proved.

The assertion of the counsel for the appellant that the sisters of the respondents-plaintiffs are not in possession of the land, the same cannot be said to be correct to the extent that they cannot be in possession of the land. Unfortunately, the defendant-appellant is not shown as co-owner or in possession of any part of the suit land. There is no dispute between the respondents-plaintiffs and their sisters Darshan Kaur and Amarjit Kaur regarding the suit land and therefore, they would be in possession of the suit land and a co-sharer has a right to protest and protect the possession against third person.

An assertion has been made by the counsel for the appellant-defendant that he was in possession of the land and his name found mentioned in the khasra girdawaris till 1990 but no evidence in support this assertion has been brought on record. Mere oral assertions of the appellant-defendant, thus, have rightly been rejected by the Courts below in the wake of the documentary evidence which has been

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brought on record by the plaintiffs-respondents.

As regards the assertion of the counsel for the appellant-defendant that the entries in the jamabandis and khasra girdawaris indicate that the land is irrigated through a tube-well but there is no tube-well in existence in the land in question, suffice it to say that merely because the land has been irrigated from any source other than the canal water establishes it is a land to be irrigated by the tube-well water. The presumption cannot be drawn that since the tube-well is in the land of the appellant-defendant, the said land was irrigated by the said source and in any case, it does not prove the possession of the appellant-defendant over the land in question.

Further, no substantial question of law arises which requires consideration of this Court.

Finding no merits in the present regular second appeal, the same stands dismissed.

CM No.9198-C of 2015

In the light of the order passed by this Court on merits of the case, no separate orders are required to be passed in the application for condonation of delay of 145 days in filing the appeal.

August 11, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE