

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.562- C of 2015 and
RSA No. 4477 of 2015 (O&M)
Date of decision 03.09. 2015.

Rameshwar and others

..... Appellants.

versus

Mohar Singh

..... Respondent.

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. Amit Verma , Advocate for the appellants.

K.C.PURI, J.

C.M. No.10752-C of 2015.

For the reasons mentioned in the application, delay of two days in filing the appeal stands condoned.

CM stands disposed of accordingly.

C.M. No.10753-C of 2015.

For the reasons mentioned in the application, delay of seven days in re-filing the appeal stands condoned.

CM stands disposed of accordingly.

C.M. No.10755-C of 2015.

For the reasons mentioned in the application, persons mentioned in para No.2 of the application are ordered to be brought on

record as legal representatives of Prahlad appellant No.2 for the purpose of this appeal.

Registry to carry out necessary correction in the memo of parties.

CM stands disposed of accordingly.

K.C.PURI J

This is an appeal directed by defendants/appellants against the judgment and decree dated 10.04.2015 passed by Shri Rajesh Kumar Bhankar, Additional District Judge, Bhiwani vide which the appeal preferred by the defendants against the judgment and decree dated 31.01.2013 passed by Shri Sunil Kumar, the then learned Additional Civil Judge (Junior Division), Loharu, was dismissed.

2. The brief facts giving rise to this appeal are that present respondent-plaintiff (herein after referred as the plaintiff) has filed a suit for permanent injunction against the present appellant-defendants to the effect that defendants and their associates be restrained from interfering into the peaceful possession of the plaintiff, as gair mourusi over the land comprised in khewat No.89min, khatoni No.186, Khasra No.4min(23-0), measuring 23 bighas 0 biswa, as per jamabandi for the year 1996-97, situated at village Allaudinpur, Tehsil Loharu, district Bhiwani and further the defendants be also restrained from forcibly encroaching upon the suit land or from destroying the crop sown by the plaintiff in the same.

3. It is further pleaded by the plaintiffs that he is resident of village Allaudinpur (Bhungla) and earns his livelihood by doing agriculture work and has good faith in law. As per revenue record the suit land is shown

to have been in possession of Shamlat Patti Sheo Chand Hasab Rasad Kabja, which has been being cultivated by the plaintiff as gair mourusi since 60 years ago, on payment of nominal rent. Further, it is pleaded that recently the suit land has been cultivated by the plaintiff and on the spot the plaintiff is in cultivating possession of the same. Khasra girdwari of the suit land is also continuing in the name of the plaintiff. Plaintiff is not the co-sharer in the Shamlat Patti Sheo Chand, rather, he used to cultivate the suit land as Muzara gair mourusi. Further, it is pleaded that consolidation proceedings are going on in the khewat and during consolidation plaintiff has come to the notice of wrong entry as co-sharer in the cultivation column and prior to this, plaintiff had no knowledge of the same. Further, it is pleaded that defendants have no concern whatsoever with the ownership, possession and cultivation of the plaintiff over the suit land. The defendants are strong headed person, who have no faith in law and are adamant to interfere into the peaceful possession of the plaintiff as muzara gair mourusi over the suit land and also adamant to destroy the crops sown by the plaintiff. The defendants have also given threat to the plaintiff on 16.10.2010 in this regard. Hence, this suit.

4. On notice, defendants appeared and filed their joint written statement wherein they took certain preliminary objections regarding maintainability, locus standi, cause of action, court fee, jurisdiction, nonjoinder and mis-joinder of necessity parties, estoppels, suppression of material facts from the court etc. On merits, it is pleaded that Chunni Lal son of Sanwal son of Chamu, common ancestor of the parties to the suit,

was in cultivating possession as co-sharer of Shamlat Patti Sheo Chand Hasab Rasad Kabja, as per jamabandi for the year 1953-54, comprised in khewat No.64/65, khatoni no.122, khasrano.4 min (22-0) and even prior there to and now this land is comprised in khewat No.89min, khatoni No.186, khasra No.4 min (23-0). Further, it is pleaded that Chunni Lal remained in possession in the same status till his death i.e upto 1986 and after his death the parties to the suit are in joint cultivating possession of the land in dispute, as co-sharers of Shamlat patti Sheo Chand Hasab Rasad kabja. The entries showing the plaintiff Mohar Singh alone in cultivating possession of the land in dispute since Rabi crops 1954 till today, are wrong, illegal, null and void and not binding upon rights of the defendants because no reason whatsoever for change of the khasra girdwari in favour of Mohar Singh from Chunni Lal has been recorded in the revenue record and the girdawari in the name of the plaintiff alone is nonest in the eyes of law. There is no reason and excuse that during the lifetime of Chunni Lal as to how the girdawari came into existence in the name of Mohar Singh plaintiff alone, while in fact, he ever cultivated the land all alone. Otherwise also, Chunni Lal never relinquished and allowed the plaintiff to cultivate the suit land alone. Further, it is pleaded that Chunni Lal during his lifetime executed a registered Will dated 30.11.1981 in favour of his all sons namely Mohar Singh, Mani Ram, Partap, Prahlad and Laxmi Narain. Answering defendants denied other averments and prayed for dismissal of the suit with costs.

5. In counter-claim filed by the defendants it is pleaded that the

entries in the revenue record showing the plaintiff in cultivating possession of the land in dispute as cosharers in place of Chunni Lal since Rabi 1954 till today, are wrong, illegal, null and void and not binding upon the rights of the defendants and the plaintiff and defendants are liable to be incorporated in joint cultivating possession of the land in dispute since 1986 on the basis of registered Will dated 30.10.1981 executed by Chunni Lal, predecessor in interest of the parties to the suit in favour of his five sons namely Mohar Singh plaintiff, Mani Ram, Partap, Prahald and Laxmi Narain and prior to 1986 in favour of Chunni Lal w.e.f. Rabi 1954, till his death, because no reason whatsoever for change of the khasra girdwari in favour of Mohar Singh from Chunni Lal has been recorded in the revenue record and the girdwari in the name of the plaintiff alone is nonest in the eyes of law and there is no reason and excuse that during the lifetime of Chunni Lal as to how the girdwari came into existence in the name of Mohar Singh. Plaintiff alone, while in fact he never cultivated the land all alone. Otherwise also, Chunni Lal never relinquished and allowed the plaintiff to cultivate the suit land alone.

6. Replication was filed. From the pleading of the parties following issues were framed : -

1. Whether the plaintiff is in cultivating possession of the suit land as gair mourusi, as alleged in the plaint ? OPP
2. Whether the suit is not maintainable in present form ? OPD
3. Whether the entries in the revenue record showing plaintiff in cultivating possession of the suit land, as co-sharer in place of Chunni Lal since Rabi, 1954 till today are wrong, illegal, null and void and not binding on the

rights of the defendants, as alleged in the written statement-cum-counter claim? OPD

4. Whether the defendants are in joint cultivating possession of the suit land, as co-sharer of Shamlat Patti Sheo Chand Hasab Rasad Kabja and the plaintiff alone has no legal right to cultivate the same, as alleged in the written statement-cum-counter claim ?OPD

5. Relief.

7. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence vide judgment and decree dated 31.01.2013, decreed the suit of the plaintiffs.

8. Feeling aggrieved, the defendants preferred First appeal. The learned Additional District Judge, Bhiwani vide judgment and decree dated 10.04.2015 dismissed the appeal of the defendants.

9. Still feeling dissatisfied with the aforesaid judgments and decrees dated 31.01.2013 and 10.04.2015, the present regular second appeal has been directed by the defendants/appellants.

10. The appellants in paragraph No.15 of the grounds of appeal, have mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether ancestral property can devolve on person alone merely as he was cultivating the land and when the other parties have not given up their right to the ancestral property ?
- (ii) Whether despite existence of a will dated 30.11.1981 in regards to ancestral property is it justified that girdwari records are altered in favour of one person ?
- (iii) Whether a decree of injunction can be granted against parties who are owners of ancestral property without examining the revenue records revealing the nature of property ?

- (iv) Whether the impugned judgments and decree passed by the learned courts below are wrong, illegal and against law and facts ?

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

12. This is a mere suit for permanent injunction. There is concurrent finding recorded by both the Courts below that plaintiff is in exclusive possession of the suit property. Even during the course of arguments, that finding has not been challenged but it has been submitted that defendants being cosharers, no injunction can be granted against cosharer. However, that argument is without any force. It is settled law that a cosharer who is in established possession of the suit property can be evicted only in due course of law. Even if the appellants are cosharers in the suit property they cannot dispossess the other cosharer in exclusive possession. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal.

13. Consequently, the appeal is without any merit and the same stands dismissed.

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

(K.C.PURI)
JUDGE

September 03 , 2015
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