

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 266 of 2014(O&M)
Date of decision :February 26, 2015

Gram Panchayat Bilaspur

..... Appellant

Versus

Nafe Singh and others

..... Respondents

RSA No. 357 of 2014(O&M)

Nafe Singh and others

..... Appellants

Versus

Gram Panchayat Bilaspur

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V. K. Jain, Senior Advocate with
Mr. Ravi Kadian, Advocate
for the appellant in RSA No. 266 of 2014.

Mr. Amit Jain, Advocate
for the appellant in RSA No. 357 of 2014.

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

Amit Rawal, J (oral).

This order of mine shall dispose of two Regular Second Appeals bearing RSA No.266 of 2014 and 357 of 2014. For the sake of decision facts are taken from RSA No. 266 of 2014..

The respondents-plaintiffs filed a suit for permanent injunction restraining the defendant Gram Panchayat from interfering into their possession and as well as from dispossessing them by

raising any construction or any other manner on the premise that they have been in settled possession in respect of land measuring 21 Kanals 9 Marlas since long i.e. since 1993 except in due course of law. The Gram Panchayat on receipt of notice while filing a written statement disputed the possession of the respondent-plaintiff and also denied that the entries showing the plaintiffs to be in continuous, cultivating possession as gair mauroosi to be totally wrong and not according to the spot.

In support of his contention the respondent-plaintiff brought on record jamabandi for the year 1942-43 to 2007-08 and as well as khasra girdawari for the year 2011-12 to contend that they are in settled possession. The trial court on the basis of the aforementioned evidence on record held that the plaintiffs are in possession over the suit land and neither there is school nor the water supply exist over the same and thus granted injunction by restraining the defendants from interfering in the possession and dispossess them in any manner except in due course of law the appeal filed by the Gram Panchayat was partly allowed by setting aside decree qua khasra No.9/1/2, 9/2/2, 17/1, 26/2 (0-1) and qua land bearing khasra No. 7, 8/2 and remaining land 0 kanal 4 marlas of 26/2 decree of trial court was upheld.

Mr. V. K. Jain, Senior Advocate appearing on behalf of the appellant-plaintiff in support of his submissions submits that both the courts below have committed illegality and perversity in granting injunction as the possession of the respondent-plaintiff was

of a tress passer whereas the appellant-defendant is in ownership of the property and thus the judgment and decrees are liable to be set aside.

I have heard learned counsel appearing on behalf of the appellant-defendant, appraised the impugned judgments and decrees of both the courts below with their able assistance and am of the view that the present appeal RSA No. 266 of 2014 is devoid of merits and is liable to be dismissed for the following reasons.

The respondents-plaintiffs through documentary evidence proved on record that they are in settled possession of the land in dispute. It is settled law that a person who has been found to be in settled possession since long cannot be dispossessed except in due course of law. Reference is invited to the judgment in **Rame Gowda Vs. M. Varadappa Naidu(dead) by L.Rs and another (2004) 1 SCC 769.** The decree granted by the trial court is most innocuous as the appellant-defendant had not been injuncted permanently but only injuncted not to dispossess and interfere in the peaceful possession of the respondents-plaintiffs by raising any construction or otherwise except in due course of law. Nothing prevents the appellant-defendant to avail the remedy in accordance with law, if permissible.

In view of what has been observed above, the judgment and decree of the courts below do not suffer from any illegality and perversity and rendered a finding of fact and law after appreciation of oral and documentary evidence.

No substantial question of law arise for

determination by this Court.

Accordingly, the appeal RSA No.266 of 2014 is dismissed.

RSA No.357 of 2014 is at the instance of the appellants-plaintiffs who have filed the appeal against the judgment of the lower appellate court whereby the lower appellate court by relying upon khasra girdawari for the year 2011-12 has deleted many of the khasra Numbers and therefore partly allowed the appeal of the respondents-plaintiffs.

Mr. Amit Jain, learned counsel appearing on behalf of the appellants-plaintiffs contends that the lower appellate court while partly allowing the appeal has committed illegality and perversity in not noticing the jamabandi brought on record since 1942-43 to show that the plaintiffs-appellants are in peaceful and settled possession of land measuring 21 Kanals 9 Marlas.

The argument of the learned counsel for the appellants-plaintiffs has some weight. The lower appellate court while partly allowing the appeal of the Gram Panchayat has heavily relied upon khasra girdawari for the year 2011-12 and has thus not discharged the obligation as enshrined under Section 96 of the Code of Civil Procedure being the last court of fact and law. It was incumbent upon the lower appellate court to examine all the documentary evidence to arrive at a decision which has been rendered by partly allowing the appeal. The findings of the lower appellate court are reversed and that of the trial court are restored and the appellants-plaintiffs are found in settled possession of khasra

girdawari mentioned in the suit consisting of land measuring 21 Kanals 9 Marlas.

The substantial question of law i.e. whether the lower appellate court had committed illegality and perversity in misreading the documentary evidence, only one document i.e. khasra girdawari for the year 2009-10 and not referred to jamabandi of 1992-93 to 2007-08 is thus answered in favour of the appellants-plaintiffs and against the respondent-defendant.

RSA No. 357 of 2014 is allowed and the judgment and decree of the trial court is restored and the respondent-defendant is restrained from interfering into the possession of the appellants-plaintiffs in any manner, much less raising any construction in except in due course of law.

Liberty is granted to Gram Panchayat-defendant to seek clarification or modification in case there was misrepresentation on behalf of plaintiff or otherwise.

(AMIT RAWAL)
JUDGE

February 26 , 2015
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