

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

**Regular Second Appeal No.5605 of 2015 (O&M)
Date of Decision: October 28, 2015.**

Smt. Ved Rani and others

.....APPELLANT(s).

VERSUS

Partap Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pritam Saini, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal filed by Smt. Raj Rani, Smt. Prabha Rani, Smt. Ved Rani, Smt. Sharuti daughters of Govind Dev and Kedar Nath son of Govind Dev (since deceased) plaintiffs in civil suit No.191-C of 2008, which was dismissed by Civil Judge (Senior Division), Hisar and the appeal filed by appellants-plaintiffs was also dismissed by District Judge, Hisar. The plaintiffs sought the relief of permanent (prohibitory) injunction restraining defendant Partap Singh from interfering in actual physical possession of the plaintiffs over the land measuring 52 kanals 12 marlas situated in village Kharkhara, Tehsil and District Hisar, as fully described in the head note of the plaint.

2. The case of the plaintiffs, in brief, is that under the order passed by Assistant Collector 1st Grade, Hisar which was upheld by Commissioner,

Hisar, he took the possession of the suit land vide rapat No.253 of 25.03.2008. However, the defendant took forcible possession of the suit land in June, 2008.

3. Defendant-respondent No.1 denied that the possession was ever delivered to the plaintiffs and alleged that plaintiffs procured rapat No.253 dated 25.03.2008 in collusion with revenue officials.

4. It is pertinent to note that suit by plaintiffs seeking the relief of permanent injunction to restrain the defendants from interfering in their actual physical possession was filed on 01.10.2008, alleging his dispossession in June 2008.

5. Both the Courts below dismissed the suit in view of the admission of plaintiff Kedar Nath that he was not in possession of the suit land at the time of filing of the suit. The relevant observation by the first Appellate Court in para 14 and 15 of the judgment read as follows:-

“14. In para No.7 of the plaint, plaintiffs have pleaded “that in the end of June 2008 defendant forcibly entered the above said land measuring 52 kanal 12 marlas without any authority of law and had sown the cotton and Moong crops in some part of the suit property. It is further pleaded by him that plaintiffs came to know about the criminal trespass and other illegal activities of defendant on 13.7.2008”. Therefore, it is the case of the plaintiffs that defendant had entered the suit land measuring 52 kanal 12 marlas in the end of June, 2008 i.e. after taking over the possession of the suit land by the plaintiff on 25.3.2008 vide rapat No.253 of the Kanungo as alleged by them. From the pleadings of the plaintiffs it is clear that plaintiffs were not in possession of the suit

property on the date of filing the present suit viz 1.10.2008. More-over, defendant has examined DW2 Jitender Kumar Clerk from the office of SDM, Barwala who has proved on record application No.2038 dated 2.9.2013 and report of Naib Tehsildar Barwala made on the said application which is exhibited as Ex.D1 to Ex.D9. Perusal of Ex.D1 to Ex.D9 shows that defendant is in possession of the suit property. It is admitted fact that order of Commissioner dated 29.2.2008 was set aside by the learned Financial Commissioner vide order dated 20.5.2009.

15. Plaintiffs have filed the present suit which is for permanent injunction, thereby seeking restraining of defendant from interfering the plaintiff in actual and physical possession over the land measuring 52 kanal 12 marlas comprised in Khasra No.135//1(8-0), 21(8-0), 22 (8-0), 136//17 (8-0), 18(8-0), 153//3(8-0), 4(8-0), 5(8-0), 6/1(0-16) situated at village Kharkhara, Tehsil and District Hisar. Therefore, in order to get the relief, plaintiffs have to prove that they are in possession of the suit property on the date of filing the suit but the plaintiffs have failed to prove that they are in possession of the suit property on the date of filing of suit since as discussed above plaintiffs themselves have pleaded that in the end of June, 2008 defendant has entered into the suit property. Moreover, the documents Ex.D1 to Ex.D9 proved on record clearly show that defendant is in possession of the suit property. Therefore, plaintiffs are not entitled for the relief claimed by them in the prayer clause (sic clause) of the suit. The law is settled that relief of permanent injunction cannot be allowed in favour of the plaintiffs when plaintiffs are not in possession of the suit property.”

6. I have heard learned counsel for the appellants.

7. Admittedly, the appellants-plaintiffs were not in possession of suit land at the time of filing of the suit. They have not sought the remedy of seeking possession of the suit land. The ejectment order of defendant-respondent No.1 had already been set aside and the proceedings are still pending before the revenue Courts. In case, the plaintiffs had been forcibly dispossessed by defendant-respondent No.1, they could avail remedy under law to seek possession of the suit land, which they had avoided.

8. Both the Courts below have committed no error of law or fact while declining the relief of permanent injunction as claimed by the appellants-plaintiffs. I find no legal or factual infirmity in the judgments of the Courts below calling for any interference.

9. No substantial question of law requiring determination arises in this appeal, which has no merits.

10. Dismissed.

October 28, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE