

RSA No.354 of 2014 (O&M)

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

RSA No.354 of 2014 (O&M)

Date of Decision: August 25, 2015

Surinder Kumar & another

...Appellants

Versus

Rakesh alias Danna & ors.

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Bhag Singh, Advocate and
Mr. Vikram Singh, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

This appeal is directed against the judgment and decree dated 30.09.2013 passed by the Additional District Judge, Kaithal, in an appeal preferred by the respondent-defendant challenging the judgment and decree dated 20.04.2011 passed by the Civil Judge (Junior Division), Kaithal, whereby the suit of the appellant-plaintiffs for permanent injunction restraining the respondent-defendants from dispossessing them forcibly and illegally from the land measuring 24 Kanals 02 Marlas comprised in Khasra Nos.888 and 889, situated within the revenue estate of village Kalayat, Tehsil and District Kaithal, has been set aside.

It is the contention of the counsel for the appellant-plaintiffs that the evidence of the respondent-defendants was closed

by the Civil Court 'by order' and there is no evidence on record on behalf of the respondent-defendants which would indicate that the appellant-plaintiffs are not in possession of the property in question. He further states that as per the patta orders issued by the Chief Executive Officer, Haryana Wakf Board, Ambala, the said land was leased out to the appellant-plaintiffs for the purpose of cultivation which itself indicates that they were in possession of the property.

His further contention is that reliance has been placed upon the jamabandi Mark-J which has been produced by the appellant-plaintiffs where it is mentioned that the said land is a gair mumkin kabristan but the said document cannot be read into evidence for holding that it was a gair mumking kabristan and therefore, cannot be used for any other purpose, much less for agricultural purposes. He, on this basis, contends that the impugned judgment and decree deserves to be set aside.

I have considered the submissions made by the counsel for the appellant-plaintiffs and have gone through the impugned judgment.

A perusal of the impugned judgment indicates that although, the appellant-plaintiffs have been able to place on record the patta orders issued by the Chief Executive Officer, Haryana Wakf Board, Ambala, which indicates that the land measuring 24 Kanals 02 Marlas comprised in Khasra Nos.888 and 889, has been leased out to the appellant-plaintiffs but the factum of the possession having

been handed-over to them does not find mention. No jamabandi has been proved on record which would indicate that they were actually in possession of the said property. Jamabandi Mark-J which has been produced by the appellant-plaintiffs has rightly been taken into consideration by the Lower Appellate Court to come to a conclusion that the said land is a gair mumkin kabristan. If that be so, the same could not have been used for any other purpose, much less for agricultural purpose for which the said land was leased out. It being a gair mumkin kabristan, no patta order could have been issued by the Chief Executive Officer, Haryana Wakf Baord, Ambala, for using the same for agricultural purposes. The findings as recorded by the learned Additional District Judge, Kaithal, in the judgment dated 30.09.2013, cannot be said to be not in consonance with law or based on no evidence.

Further, no substantial question of law is involved in the present appeal.

The appeal, therefore, stands dismissed.

August 25, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**