

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.3709 of 2014 (O & M)

Date of Decision: *January 30, 2015*

Mewa Singh & another

..... APPELLANTS

VERSUS

Iqbal Singh

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

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?

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PRESENT: - Mr. G.S. Nagra, Advocate, for the appellants.

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Jaspal Singh, J

1. Challenge in this appeal preferred by the defendants – appellants is to judgment and decree dated Aril 21, 2014 passed by the learned Additional District Judge, Jalandhar in Regular Civil Appeal No.CA/04/2014 captioned as ‘Mewa Singh & another vs. Iqbal Singh, whereby an appeal preferred against judgment and decree dated November 27, 2013 passed by the Additional Civil Judge (Senior Division), Nakodar

whereby suit of the plaintiff – respondent was decreed with costs and defendants – appellants were restrained from interfering in his possession over the suit property, fully detailed and described in the head note of the plaint/judgment and further restraining them from cutting & removing Eucalyptus trees standing on the eastern side of the suit property except in due course of law, was dismissed.

2. Briefly stated, the facts giving rise to the instant lis are that plaintiff – respondent is owner in possession of the suit land measuring 22 kanal 14 marla by way of oral partition with other co-sharers for the last about 10 years. He has planted approximately 3000 eucalyptus trees about 4 years ago in Khasra Nos.4//1/1/2, 1/2/2, 10/1, 11/1, 5//6/1, 15/1, 15/2 and 16. Previously, the property in suit was owned and possessed by Bhag Singh, father of plaintiff – respondent, and after his demise, it has been inherited by him on the basis of a Will executed by Bhag Singh. Defendant – appellant No.2, who is residing abroad, had been extending threats to interfere in his peaceful possession telephonically as well as through his attorney, appellant No.1, as well as to cut and remove the eucalyptus trees for which they have no right.

3. The suit was resisted by the defendants – appellants by filing written statement, raising objections with regard to maintainability of the suit, locus-standi, cause of action of plaintiff to file the suit, suppression of material facts, plaintiff is estopped from filing the suit it being bad for misjoinder and nonjoinder of necessary parties, suit is barred under Order 2 Rule 2 CPC as well as under Order 7 Rule 1(j) CPC. On merits, it has been alleged that Bhag Singh, father of plaintiff – respondent earlier filed a similar Civil Suit No.147 dated May 6, 2005 in respect of land in dispute which was dismissed on August 27, 2008 but the plaintiff, while filing the suit before the learned trial court, did not disclose the earlier litigation.

4. It has further been claimed that defendant – appellant No.2 is residing in Canada for the last 15 years, so, question of extending threats does not arise. Another case captioned as ‘Amarjit Singh vs. Chanan Singh’ in which Mohinder Singh and Bhag Singh were parties, bearing Civil Suit No.217 of 2009 was also dismissed on September 24, 2010. Plaintiff again filed the instant suit.

5. After analyzing the evidence led by parties and hearing learned counsel for the parties, suit of the plaintiff –

respondent was decreed vide judgment and decree dated November 27, 2013. An appeal preferred by the defendants – appellants against the said judgment & decree was dismissed vide judgment and decree dated April 21, 2014 affirming the decree passed by the learned trial court.

6. Feeling aggrieved, defendants – appellants have approached this Court by way of the instant regular second appeal. The main controversy involved in the instant appeal is whether the plaintiff – respondent is in exclusive possession of the suit property and is entitled to the decree for permanent injunction.

7. While assailing the impugned judgments and decrees passed by the courts below, Mr. G.S. Nagra, Advocate, for the appellants has argued that the plaintiff – respondent has failed to establish his exclusive possession over the land in dispute. A perusal of jamabandi pertaining to Year 2005-06 Ex.P1 as well as jamabandi for the Year 2010-11 Ex.P2 do not depict Iqbal Singh to be in exclusive possession, whereas, suit land is owned by a number of co-sharers. It is well settled that the suit for injunction is not maintainable at the instance of a co-sharer against other co-sharers.

8. It has further been argued that the courts below have given much stress while decreeing the suit of plaintiff – respondent upon mutation No.894 regarding which a note has been appended in the jamabandi but the said mutation only depicts that certain khasra numbers of rectangle No.11 were given to Bhag Singh whereas in the present case, those khasra numbers have not been mentioned. Both the courts below have also wrongly ignored and discarded Exs.D1 to D3. A perusal of Ex.D1 clearly reflects that suit property was joint between Bhag Singh and Chanan Singh alongwith some other co-sharers and the matter is still pending before the revenue authorities. The partition among the co-sharers has not so far been finalized. So, both the judgments and decrees under appeal are not sustainable in the eyes of law and are liable to be set aside by acceptance of the instant appeal.

9. This Court has given an anxious thought to the submissions made by the learned counsel and meticulously scanned the impugned judgments passed by the courts below but this Court does not find any substance in various submissions made by learned counsel which have been referred to above.

10. A glance at the jamabandi for the Year 2005-06 Ex.P1 as well as jamabandi for the Year 2010-11 Ex.P2 clearly depict that Iqbal Singh, respondent – plaintiff is recorded to be in possession of the suit property alongwith some other co-sharers. He became a co-sharer in the suit property after demise of his father Bhag Singh. It is also evident that mutation of inheritance has already been sanctioned in his favour alongwith his brother Gurdeep Singh. Same position qua ownership and possession is reflected in Khasra Girdawari Ex.P3 pertaining to the period 2006 to 2011. The names of defendants – appellants do not figure in the aforesaid jamabandies and khasra girdawari even as a co-sharer or otherwise. No doubt Ex.D1 placed on record by the defendants – appellants depicts the suit property to be joint between Bhag Singh and Chanan Singh, yet it clearly discloses that mutation No.894 has been sanctioned qua partition among parties of their land and properties including the suit land. Even Ex.D3, Sanad Takseem, placed on record by the defendants – appellants also shows that Sanad Takseem has already been issued. So, on the basis of above referred cogent and convincing evidence or as well as documentary, both the courts below have rightly concluded that the plaintiff – respondent is in exclusive

possession of the suit property and have enjoined the defendants – appellants to interfere in the suit property as well as to cut and remove eucalyptus trees. The judgments and decrees passed by the courts below are absolutely in accordance with the evidence available on file and settled canons of law, and do not suffer from any infirmity or illegality. Thus, no interference of this Court is justified.

11. In the light of what has been discussed above, the instant appeal being devoid of merit is dismissed whereby the impugned judgments and decrees of the courts below are upheld.

12. No order as to costs.

January 30, 2015
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(Jaspal Singh)
Judge