

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 4839 of 2014 (O&M)
Date of decision: September 22, 2015

KAMLESH KUMAR & OTHERS

.....APPELLANTS

VERSUS

HARKESH & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. *Whether the Reporters of the 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? (Yes✓)*

Present:- Mr. Sunny K. Singla, Advocate
for the appellants.

JASPAL SINGH, J

CM No. 11355-C of 2014

For the reasons mentioned in the application, the same is allowed and delay of 6 days in filing the instant appeal is condoned.

CM stands disposed of.

RSA No. 4839 of 2014

Feeling dissatisfied against the judgment and decree dated May 08, 2014 passed by learned Addl. District Judge, Patiala whereby, appeal preferred by appellants challenging the judgment and decree dated December 07, 2012 passed by learned Addl. Civil Judge (Sr. Division), Patiala titled as ***“Karamjit Singh & others v.***

Harkesh & another” was dismissed and the judgment and decree dated December 07, 2012, was upheld.

2. Briefly, stated the facts giving rise to the instant lis are that the appellants/plaintiffs brought a suit seeking decree for possession regarding the land measuring 2 biswas comprised in khasra No. 317 situated at village Kishanpura Tehsil and Distt. Patiala, and also claiming a decree for mandatory injunction directing the defendants to remove their Malba from the suit land.

3. The plaintiffs/appellants alleged that the property in dispute was owned by Kapura as he was one of the khewatdars of the village and he remained in possession of the land in question. After his death plaintiff No. 1 (Karamjit Singh) being his only surviving legal heir came into possession of the land in question. Plaintiff No. 1-Karamjit Singh entered into an agreement with other plaintiffs for sale of the suit land to them on 30.07.2002. Plaintiff No. 1-Karamjit Singh had delivered the possession of the land in question to plaintiffs No. 2 to 4 namely Kamlesh Kumar, Jala Ram and Ram Lal. The total sale consideration was settled at ₹8000/- and plaintiff No.1 had received ₹5000/- as earnest money at the time of execution of the agreement. It was agreed that plaintiffs No.2 to 4 will pay the remaining amount to him at the time of execution of the sale deed on 15.12.2002. Plaintiff No.1-Karamjit Singh has agreed to get the mutation entered in his own name and thereafter to execute the sale deed in favour of plaintiffs No.2 to 4. After taking the possession of the land in question, plaintiffs No.2 to 4 raised a boundary wall upto the height of 6/7 feet and some other construction over the land in

question. Photograph of the newly constructed boundary wall were taken. The defendants alongwith some other persons namely Dev Raj, Jarnail Singh, Kala Ram sons of Sadhu Singh etc. and police officials came to the land in question. They were armed with deadly weapons and threatened to take forcible possession of the land in question. In fact, they forcibly entered into the land in question and demolished some portion of the boundary wall. An application in this regard was moved to the police. The defendants had been claiming that the suit land falls in khasra No. 316. The plaintiff had filed a suit for permanent injunction against the defendants. With the help of the police the defendants entered into the land in question on 7.10.2002. On the application moved by plaintiffs No. 2 to 4, the Revenue Authorities had conducted the demarcation of the land in question on 13.11.2002 and they found that the defendants are in possession of the said land. The Revenue Authorities intended to deliver the possession of the land in question to the plaintiffs with the help of police but SHO P.S.Julkan had refused to provide the police help. Vide order dated December 12, 2012 passed in CRWP No. 52147 this Court held that the police should provide necessary help so that no untoward incident takes place. The plaintiffs further pleaded that the defendants were repeatedly requested to deliver the possession of the land in question to the plaintiffs but to no effect. Hence this suit.

4. Upon notice, defendant No.1 did not contest the suit. However, defendants No. 2 to 4 put in appearance and filed written statement drawing the averments raised in the plaint and alleging

that the land in question was *shamlat* land and vests in the gram panchayat. The plaintiffs have no concern with the land. It has further been alleged that neither the father of plaintiff No.1 was in possession of the property in suit nor plaintiff No.1 ever came into the possession thereof. The execution of the agreement of sale by plaintiff No.1 in favour of plaintiffs No. 2 to 4 as well as the alleged delivery of possession by him to other plaintiffs No. 2 to 4 has also been categorically denied. Similarly, raising construction in the shape of boundary wall by plaintiffs No. 2 to 4 has also been denied by the defendants. It has been averred by defendants that the land in question was in their possession continuously for so many years and they raised the construction of room about 7 years prior to the institution of suit. Defendants, accordingly, prayed for the dismissal of the suit.

5. Both the parties have afforded ample opportunities to adduce and conclude their evidence in support of their respective pleadings. They led oral as well as documentary evidence in support of their respective claims.

6. After hearing learned counsel for the parties and appraisal of evidence, suit of the plaintiffs was dismissed vide judgment and decree dated December 07, 2012.

7. Aggrieved against the aforesaid judgment and decree passed by the lower Court dated December 07, 2012, plaintiffs preferred appeal bearing CA No. 14R/13.2.2013 but that appeal was also dismissed by the Id. appellate court vide judgment and decree dated May 08, 2014.

8. Dissatisfied with the judgments and decrees delivered by both the courts below, plaintiffs/appellants approached this Court by way of filing instant appeal.

9. While assailing the findings recorded by both the Courts below and impugned judgments and decrees, it has been ebulliently argued by learned counsel for the appellants that mis-appreciation of evidence as well as legal proposition applicable to the facts and circumstances of the case has resulted into miscarriage of justice. Both the Court below have wrongly held that the suit land belongs to the Gram Panchayat. In Fact, there was no such pleadings or evidence available on file to conclude that the land vests in the Gram Panchayat. Moreover, appellants-plaintiffs were claiming the possession of the property under Section 6 of the Specific Relief Act, 1963 (for short, 'Act' only). In such a situation, both the Courts below were not required to go into the question of title while deciding the summary suit under Section 6 of the Act.

10. It has further been contended that the appellants-plaintiffs were forcibly dispossessed from the suit land by respondents-defendants in the month of October 2004 and the suit was filed within a period of six months from the date of their dispossession. Revenue record and copy of jamabandi pertaining to the suit land for the year 1999-2000 (Ex.P-17) depicts the ownership of the land in the name of *shamlat deh hasab rasab raqba khewat*. However, Kapura @ Hazura son of Antu has been shown in the possession thereof. He is none else but the father of plaintiff-appellant No.1. Khasra girdawari 2000-01 to 2002 also shows the possession of aforesaid Kapura son

of Antu over the land in suit, which was subsequently corrected in the name of appellants-plaintiffs No.2 to 4 vide Rapat No.603 July 23, 2002 as is evident from the copy of Khasra Girdwari Ex-P18. Since, appellant-plaintiff No.1 is in settled possession of the property in dispute, who further delivered the same to appellants-plaintiffs No. 2 to 4 vide agreement dated July 30, 2002 Ex.P-15, appellants-plaintiffs were entitled to the decree of possession, who were illegally dispossessed by the respondents-defendants by using force. So, the findings recorded by the Id. Lower Court and affirmed by the Id. Appellate Court especially with regard to issue No.3 deserve to be reversed. Consequently, impugned judgments and decrees are liable to be set aside by way of acceptance of instant appeal and suit of the appellants-plaintiffs deserves to be decreed that too with special costs.

11. After bestowing due consideration to the aforesaid submissions made by learned counsel for the appellants and scrutinizing the impugned judgments and decrees, this Court is of the considered view that the same carry no legal substance.

12. Undoubtedly, land in question has been recorded in the name of *shamlat hasab rasab raqba khewat* and one Kapura son of Antu has been shown to be in possession thereof but there is no evidence at all on the record to show that the land in question was ever partitioned amongst the khewatdars and that the suit land fell to the share of Kapura son of Antu or that he was the proprietor of the village. He was not having any title in the property in question nor any such declaration of his title sought by him at any point of time under

Section 11 of the Punjab Village Common Land Regulation Act. Here, it would be pertinent to mention that appellant-plaintiff No. 1 Karamjit Singh did not appear or step into the witness box to depose that he remained in possession of the property in suit or that he delivered the possession thereof to his co-appellants-plaintiffs. Similarly, there is no evidence except the assertion of the plaintiffs that they raised construction of the boundary wall over the land in dispute. It has emerged from the testimony of DW-1 Paramjit Singh that Kapura @ Hazura Singh left the village in the year 1976 whereas his son Karamjit Singh i.e. appellant No.1 left the village many years ago. Even one of the plaintiffs Kamlesh Kumar has admitted that Karamjit Singh is living in village Ghagga for the last about 10-15 years. So, in such a situation, it cannot be said that Karamjit Singh was in possession of the property or that he delivered the possession thereof to his co-plaintiffs-appellants No. 2 to 4. It would also be important to note here that Kapura @ Hazura left for heavenly abode prior to 2002 but even then, the entries are continuing on in his name. When the entries are shown in the name of dead person, no relevance can be attached to such entries. Thus, there is no cogent and convincing evidence to show that plaintiff-appellant No.1 was in possession of the property in suit or that he delivered the possession thereof to his co-plaintiffs-appellants.

13. Now, coming to another aspect of the case, that is, with regard to the passing of the decree under Section 6 of the Act. Though, an amendment for seeking possession was sought by the appellants-plaintiffs but it was not allowed by the concerned Court.

There is also nothing on the record to suggest that the appellants-plaintiffs were dispossessed within 6 months preceding the filing of the suit. The complaint lodged by one of the plaintiffs to DIG, Patiala was also found to be false. So, in such a situation, it can be safely concluded that neither the plaintiffs-appellants have any title over the property in suit nor they ever came in possession thereof. As such, question of their dispossession from the suit property does not arise at all. Both the Courts below have given concurrent findings in this regard, which do not call for any interference by this Court. Rather, this Court is of the considered view that the findings recorded by both the Courts below are absolutely in consonance with the evidence available on file and settled canons of law.

14. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such, same is dismissed whereby impugned judgments and decrees passed by both the Courts below are affirmed.

(JASPAL SINGH)
JUDGE

September 22, 2015

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