

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 774 of 2014 (O&M)

Date of decision: 21.08.2015

Dinesh Kumar Swaroop and another

...APPELLANTS

VS.

Jarnail Singh

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Arun Singal, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgments and decree passed by the Courts below where the suit of the appellants-plaintiffs for vacant possession of land measuring 114.38 sq. yards comprising in Khasra No. 1467/2 min, as detailed in the head note of the plaint, and a consequential permanent injunction restraining the defendant from alienating the suit land or creating charge on the same, stands dismissed.

It is the contention of the counsel for the appellants that the respondent-defendant has encroached upon Khasra No. 1467/2 and a land measuring 114.38 sq. yards is in his possession, for which a decree for vacant possession was prayed for. He contends that Khasra No. 1434 was sold by Mohan Lal to the respondent-defendant on 28.05.1996, which was not a part of the sale deed dated 11.11.1991, according to which, the appellants-plaintiffs, along with other partners, had bought 8 specific

Khasra Numbers comprising of 1466, 1467, 1469, 1470 and 1472 min North (0-12). This was bought in equal shares. Since specific Khasra Numbers were mentioned therein they being in possession of their respective land, a mutation dated 01.05.1992 was entered showing the appellants-plaintiffs to be in possession of Khasra No. 1467/2. The respondent-defendant has encroached upon the said land and in support of this contention, he has placed reliance upon the cross-examination of the respondent-defendant, wherein he admits the Map Ex. P-1. He, therefore, contends that the findings recorded by the Courts below cannot sustain and deserve to be set aside as also the judgments and decree and the appeal be allowed.

This contention of the counsel for the appellant cannot be accepted in the light of the categorical and clear findings given by the Courts below to the effect that the appellants-plaintiffs have not been able to prove that Jarnail Singh is in possession of Khasra No. 1467/2. In the absence of there being any unauthorized/illegal possession at the hands of Jarnail Singh-respondent-defendant, the decree, as has been prayed for, could not have been granted by the Courts below and rightly so, the Courts have dismissed the suit. Merely because the site plan has been put to the respondent-defendant, who has accepted it to be correct, does not mean that he has encroached upon Khasra No. 1467/2 as per the assertion of the appellants-plaintiffs. The onus was upon them to prove such an assertion, as has been made in the suit, which has not been discharged by them. The findings recorded by the Courts below being in accordance with the evidence, which has been led by the respective parties, do not call for any interference by this Court. Further no substantial question of law arises which requires consideration of this Court and, therefore, the appeal stands dismissed.

C.M. No. 1755-C of 2014

Prayer in this application is for framing an additional issue i.e.

“Whether the plaintiff is entitled to the possession of the suit property: OPP.”

In the light of the order, which has been passed by this Court, the present application cannot be accepted as even if the said issue is taken to be as it is, the relief, as has been prayed, could not have been granted to the appellants-plaintiffs because of they being not able to prove the illegal possession of the respondent-defendant.

The application, therefore, stands dismissed.

C.M. No. 1754-C of 2014

In the light of the dismissal of the main appeal, no separate orders are required to be passed in this application and, therefore, the same stands dismissed.

August 21, 2015

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**