

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.7018 of 2016

Date of Decision.20.10.2016

Harcharan Singh and others

.....Petitioners

Vs.

Sukhdev Singh and others

.....Respondents

Present: Mr. Ravi K. Mattoo, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioners-plaintiffs are aggrieved of the impugned order whereby the application seeking additional evidence to examine Halqa Patwari, has been dismissed.

Mr. Ravi K. Mattoo, learned counsel appearing for the petitioners submits that in cross-examination of the defendant one tuck of land measuring 117 kanals 11 marlas and in another tuck measuring 64 kanals 1 marla has surfaced only for the first time and in order to belie the aforementioned fact, Halqa Patwari is required to be examined. No specific stand in this regard has been taken in the written statement. The Court below has failed to appreciate the aforementioned fact, much less, ignored the contents of the written statement.

I have heard learned counsel for the petitioners, appraised the paper book and of the view that as per the averments made in paragraph 2 of the written statement, there is categoric stand regarding two tucks of land. Paragraph 2 of the written statement is reproduced as under:-

“2. That para No.2 of the plaint is denied as alleged. Its contents are not admitted to be correct. It is specifically

denied that plaintiffs are in possession of part of the property as tenant since 1950 as alleged. It is specifically denied that any portion which is in possession of the defendant is under tenancy of the plaintiffs as alleged. It is denied that plaintiffs are cultivating the land from the period of their forefathers as alleged. It is specifically denied that defendant has no concern with the property as alleged. The allegations contained in this para are devoid of force. The defendant purchased the property from above said Amarjit Singh and Kulwant Singh who were co-sharers in the suit property and vide registered sale deed No.1367 dated 24.07.2006 sold the property to the extent of 24 kanals 8 marlas out of Khata No.501, khatauni No.681, 682, 683 and 688 and also out of the khata measuring 117 kanals 11 marlas bearing khata No.215, Khatauni Nos.311 to 316 for a consideration of Rs.51,85,000/- and the sale deed was duly scribed by Shri Kulwinder Singh Toor Advocate and was witnessed by Surjit Singh Lambardar Bhawanigarh and Darbara Singh son of Gurdev Singh of village Nadampur. The possession of the property measuring 24 kanals 8 marlas was delivered to the defendant at the spot by Amarjit Singh and Kulwant Singh. However, it is pertinent to submit here that the vendors Amarjit Singh and Kulwant Singh leased out the property of their share to Surjit Singh (Fauji) son of Hardial Singh, resident of Bhawanigarh at the rate of Rs.3000/- per bigha from 13th April, 2005 to 13th April, 2007. At the time of execution of the sale deed, the vendors of the defendant got the land vacated from Surjit Singh (Fauji) by making the payment of Rs.75,000/- to Surjit Singh and in this manner, Surjit Singh lessee handed over the possession at the spot to the defendant regarding land measuring 24 kanals 8 marlas bearing khata No.87//11/8-0, 12/8-0, 13/1/3-8, 10/8-0. In this manner, defendant has now become owner in possession of land measuring 24 kanals 8 marlas of land and in this manner, the defendant out of the suit and is in possession of 16 kanals 8 marlas i.e.87//11/6-0, 12/8-0, 13/1/2-8. However, the

defendant has no concern with the rest of the property mentioned in the heading of the plaint. It is further pertinent to submit here that the mutation in respect of the defendant bearing No.15348. The certified copy of the mutation is attached herewith for the kind perusal of the Hon'ble Court. The photostat copy of the sale deed dated 24-7-2006 is also attached herewith. The original sale deed is in possession of the defendant at the time of evidence or as and when ordered by the Hon'ble Court. The plaintiffs however have not come to the Court with clean hands. The plaintiffs have failed to disclose in the plaint that before filing the present suit, the plaintiffs have moved an application to the police Bhawanigarh on 6.8.2006 wherein the plaintiffs have specifically stated that they are not in possession of the land, rather one Baldev Singh son of Jang Singh, is in possession as lessee of the plaintiffs, whereas in the present suit it has nowhere mentioned in the suit. It is further pertinent to submit here that the plaintiffs are not in possession of the property to the extent of 24 kanals 8 marlas details of which has been given above, because the plaintiff Harcharan Singh is plying taxi at Bhawanigarh by himself driving the same and similarly Sukhcharan Singh and Jagdev Singh are plying trucks. So far as Charanjit Kaur and Kamaljit Kaur are concerned, they are not residing at Bhawanigarh and are residing at different places far away from the property in dispute and residing at their in-laws house and as such, it is very much evident that the plaintiffs are not in possession of 24 kanal 8 marlas of land purchased by defendant and possession of which has been delivered at the spot to the defendant by the vendors by getting the same vacated from Fauji-Surjit Singh lessee of the vendors of defendant. The plaintiffs have filed the present suit with mala fide intention and with a view to harass the defendants and to grab the defendant by the vendors by getting the same vacated from Fauji-Surjit Singh lessee of the vendors of defendant. The plaintiffs have filed the present suit with mala fide intention

and with a view to harass the defendants and to grab the property of the defendant with the connivance of the Police P.S., Bhawanigarh and with the help of police tried to take forcible possession from the defendant which was evaded by the defendant with great persuasion. It is further pertinent to submit here that at the time of delivering the possession to the defendant, paddy crop was sown by Surjit Singh Fauji who received ₹75,000/- from Amarjit Singh and Kulwant Singh as a cost and compensation.”

If this fact was in the knowledge of the plaintiff, could have led evidence, sought to be placed by additional evidence, in affirmative. Moving aforementioned application tantamounts to leading rebuttal evidence in the absence of rebuttal issue. I am of the view that such practice is liable to be deprecated and cannot be entertained, rightly so, the Court below has dismissed the application.

I do not find any reason to interfere with the order under challenge, much less, the order cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

October 20, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No