

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

**Regular Second Appeal No.3320 of 1987 (O&M)
Date of Decision: August 10, 2016.**

Raj Singh (Deceased) through LR's and others

.....APPELLANT(s).

VERSUS

State of Haryana and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashok Verma, Advocate
for the appellant (s).

Mr. Ram Tilak Redhu, D.A.G. Haryana,
for the respondents.

SURINDER GUPTA, J.

This is appeal by the plaintiffs Raj Singh & Others against the judgement passed by learned Addl. District Judge, Sirsa dismissing their suit claiming the relief of declaration that they are owners in possession of the suit land as per the share described in the head note of the plaint and for permanent injunction restraining defendants No.1 to 3 from interfering in the cultivating possession of the plaintiffs over the suit land by auctioning the same or in any other manner.

2. Case of the plaintiffs, in brief, is that in the year 1944 Noor Hassan adopted son of Alla Bakhash, resident of village Maujgarh, Teshil Dabwali, Distt. Sirsa granted "Patta Dawami" in favour of Lal Singh son of Fatta Singh vide registered lease deeds dated 11.03.1944 and 25.05.1944.

Plaintiffs claimed occupancy rights and title over the suit property under the provisions of Punjab Tenancy Act and Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

3. The defendants contested the claim of plaintiffs inter alia pleading that the lease of agricultural land executed by Muslims before the partition of country, stood extinguished automatically w.e.f. 25.07.1949 as per the provisions of Section 9 (1) of East Punjab Displaced Persons (Resettlement) Act, 1949. The suit land became evacuee property and vested in the Custodian/Government by operation of law contained in Section 4 of the East Punjab Administration of Evacuee Property Act, 1947 (later referred to as Act of 1947) read with Section 8(2-A) of the Administration of the Evacuee Property Act, 1950 (later referred to as Act of 1950). This property is now to be disposed of in accordance with the Displaced Persons (Compensation & Rehabilitation) Act, 1954 and the rules framed thereunder. A person in possession of evacuee land can hold the possession on behalf of custodian and not in his own right and can be ejected from the land at any time as per the provisions of Section 8(4) of the Act of 1950.

4. Then Sub Judge, Dabwali held that the plaintiffs are owners in possession of the suit land and decreed the suit. However, in appeal, the first Appellate Court set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiffs.

5. During the course of arguments, learned counsel for the appellants has argued that the plaintiffs are admittedly in possession of the suit land. Even if, their possession is unauthorised, they are not trespassers

as their possession over the suit land before coming into force of Act of 1947 and Act of 1950 was legal and they can be dispossessed only in accordance with law. As such, the first Appellate Court has committed error while dismissing the suit of the plaintiff in entirety. He submits that plaintiffs are not challenging the findings of the first Appellate Court so far as it relate to rejecting their claim of attaining title over the suit land but seek the relief of injunction to the effect that the plaintiffs be not dispossessed from the suit land except in due course of law.

6. This fact is not disputed that the plaintiffs are in possession of the suit property. Both the Courts below have recorded the findings to this effect. The plea that the plaintiffs have attained title over the suit land, has not been pressed during the course of arguments. It is not disputed that the plaintiffs legally came in possession of the suit land in the year 1944. However, their possession became unauthorised under the provisions of East Punjab Displaced persons (Resettlement) Act, 1949; Administration of Evacuee Property Act, 1950; Displaced persons (Compensation & Rehabilitation) Act, 1954 and other allied Acts. As the plaintiffs are in established possession, the defendants can take the same from them in due course of law. The first Appellate Court observed in para 13 of the judgment that the plaintiffs are in possession over the suit land. The Trial Court has allowed two relief to the plaintiffs; firstly, for declaration that they are owners in possession over the suit land and secondly, defendants No.1 to 3 were restrained from interfering in possession of the plaintiffs over the same. Learned first Appellate Court dismissed the suit of the plaintiffs so far as it relate to the relief of declaration and not in entirety.

7. In view of the above and keeping in view the submission of learned counsel for the appellants, this appeal is partly accepted without framing any substantial question of law and suit of plaintiff is decreed to the extent that the defendants are restrained from interfering in their possession except in due course of law. It is also clarified that dispossession of the plaintiffs was stayed under order dated 03.11.1987 passed in this case. They are in unauthorised possession, as such, they will be liable to pay the mesne profits of the suit land for the period after 03.11.1987 which will be assessed by the executing Court at prevailing market rate from 03.11.1987 till the date they are evicted from the suit land.

8. Keeping in view the facts and circumstances of the case, the parties are left to bear their own costs.

August 10, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No