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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2365-2008 (O&M)
Date of decision : 04.08.2016

Satnam Singh

... Appellant

Versus

Harbans Lal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

Mr. Rajeshwar Singh Thakur, Advocate
for the respondent No.1.

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?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the injunction granted by the trial Court has been set aside.

Mr. Inderjit Sharma, learned counsel appearing on behalf of the appellant-plaintiff submits that the claim in the suit was seeking permanent injunction restraining the respondent No.1-defendant, his agents, servants and assignees from forcible dispossession and interference in the peaceful and cultivating possession over the land measuring 10 kanals bearing Rect. No.60 Killa No.13(8-0), out of it 2-0 kanal min Charda and Rect. No.60, Killa No.21 (8-0) comprising in Khewat No.334, Khatauni Nos.627 & 628

as per Jamabandi for the year 1995-96 situated in the revenue Estate of Village Dehriwal Kiran, H.B.77, Tehsil and District Gurdaspur. The possession of the aforementioned property was proved through the Jamabandi (Ex.P-1) for the year 1995-96, though in the column of cultivation, respondent No.1-defendant was shown to be in possession of 2 kanals of land, but the aforementioned revenue record from Khariff 1998 was corrected vide order of the Assistant Collector 2nd Grade, Kalanaur by visiting the spot. The said order had not attained finality. Thus, the entry, in this regard, was effected in the jamabandi (Ex.P-3). The said order had attained finality. The trial Court on the basis of the aforementioned evidence decreed the suit, but the lower Appellate Court has reversed the findings, by relying upon the judgment and decree dated 08.08.2001 in respect of the litigation arrived at between Lakha Singh and Harbans Lal which was in respect of land measuring 57 kanals and odd marals. Though, the aforementioned decree reveals that Harbans Lal was found to be in possession of entire land except 19 kanals 1 marals, but there was no description of the khasra and killa number and therefore, that would not have carried weight in favour of the respondent No.1-defendant. Moreover, the appellant-plaintiff was not a party in the aforementioned litigation. He submits that both the parties and as well as the Central Government are not claiming title of the aforementioned property. Once the appellant-plaintiff has proved the possession, he is required to seek the protection through the competent Court of law and cannot be dispossessed except in due course of law in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **“Rame Gowda V/s Mr. Varadappa Naidu (dead) by LRs and another”**,

2004(1) SCC 769, thus, urges this Court for setting aside of the judgment and decree of the lower Appellate Court and prays for formulation of the following substantial question of law arises for determination.

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity, much less, tantamounts to misconstruing and misreading of the oral and documentary evidence, much less, law.

Mr. Rajeshwar Singh Thakhur, learned counsel appearing on behalf of respondent No.1-defendant submits that the Assistant Collector 2nd Grade, Kalanaur was not competent authority to correct the khasra girdawari in view of the embargo in Section 45 of the Punjab Land Revenue Act, 1887. In support of his contentions, he relies upon the judgments of this Court rendered in “Kurdia V/s Surta” 1992 (1) RRR 319, “Gopal Singh (died) through his LRs V/s Punjab State” 1992 (2) RRR 44, “Babu Ram (deceased) through LRs V/s Pohhlo Ram (deceased) through LRs” 1993 (1) RRR 356 and “Chiranji Lal V/s Gram Panchayat of Village Kojinda” 1996 (3) RCR (Civil) 491 and the provisions of (vi) of sub-Section Section 2 of Section 158 of the aforementioned Act would not apply. It is in this background of the matter, the lower Appellate Court reversed the findings being the last Court of fact and law, thus, urges this Court for affirming the findings under challenge as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is merit and substance in the submissions of Mr. Inderjit Sharma, for, respondent No.1-defendant cannot challenge the aforementioned order by raising the legal argument as culled

out in the judgment cited (supra), in the absence of the declaration or challenge. It is a settled law that the revenue record, as per Section 44 of the Punjab Land Revenue Act, 1887, carries a presumption of truth, until and unless the same is rebutted, the defendants have failed to rebut. In the absence of the rebuttal, the corrected copy of the jamabandi (Ex.P-3) has to be looked into which was taken care of by the trial Court. As per the judgment and decree, the appellant-plaintiff was not a party and the khasra and killa number are wanting and therefore, the possession of Harbans Lal cannot be connected with the particulars of the suit property.

For the foregoing reasons, I am of the view that the lower Appellate Court has committed illegality and perversity in not noticing the aforementioned facts and therefore, the judgment and decree is not sustainable and accordingly, the same is hereby set aside and that of the trial Court is restored. The suit of the appellant-plaintiff is decreed. The substantial question of law is answered in favour of the appellant-plaintiff and against the respondent No.1-defendant.

Appeal stands allowed.

Decree Sheet be prepared.

04.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**