

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4419 of 2010

Date of Decision: December 09, 2016

Dharampal

...Appellant

Versus

Baldev Raj & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Harkesh Manuja, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgments and decrees of the Courts below, whereby the suit seeking following relief, has been dismissed:-

“A decree for permanent injunction restraining the defendants forever from interfering over the agricultural land comprising to the extent of ½ share in khewat No.489/464 khatoni no.693, Khasra No.3085 (0-12), 3086 (2-2), 3087 (1-1), 3088 (8-5), 3099 (0-18), kite 5 measuring 12K-8M situated in Taraf Insar vide Jamabandi for the year 1998-99. Further restraining the defendants from dispossessing the plaintiff from the suit land forcibly and illegally and further restraining the defendants from raising any construction over the suit land on the pretext of any means either for cremation ground or of any other nature in this suit land of the plaintiff and further restraining the defendants from changing the nature of the suit land forcibly and illegally for any means.”

According to Mr.Harkesh Manuja, learned counsel for the appellant-plaintiff, the Lower Appellate Court has not performed its duty as per the provisions of Order 41 Rule 31 CPC. In fact, the reasons assigned

are not related to the controversy in dispute, much less there is no reference of rebutting the documents of the appellant-plaintiff. In support of his contention, he has drawn the attention of this Court to the findings rendered in Para 13 of the judgment, particularly starting from mid of the same. The relevant portion of the same reads thus:-

“Though the suit property is shown to be in the name of Tahla Ram and Mahla Ram vide mutation No.8980 sanctioned on 4.2.88 copy of which is Exhibit PW1/A and the suit property has also been mutated in the name of Dharampal and Kartari Bai vide mutation copy of which is Exhibit PW1/B on the basis of same civil court's judgment and Khasra Girdawari Exhibit-PW1/C is in the name of Tahla Ram and the land is in the name of Dharampal, Kartar Bai and Mulakh Raj on the basis of mutation as per jamabandi for the year 1998-99, copy of which is Exhibit PW1/D but these are not helpful to plaintiff at all as the presumption is attached only to the jamabandi but the same is rebuttable which has been successfully rebutted by oral as well as documentary evidence led by defendants as has been held by Hon'ble Apex Court in Bajranglal Shiv Chandrai Rule's case (Supra), that in a suit for possession and declaration of title, burden to prove the same is on the plaintiff, in State of Himachal Pradesh's case (Supra), it has been held by our own Hon'ble High Court that plaintiff is to establish his case independently and he can not take benefit of weakness of defence.”*

Thus, there is gross illegality and perversity.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book.

This Court had issued notice of motion on 10.9.2015. Service

* State of Himachal Pradesh Vs. Keshav Ram & others AIR 1997 SC 2181

on respondent Nos.1, 4 and 6 had been effected, but they did not put in appearance. In the meantime, respondent Nos.2, 3 and 5 died, but their legal representatives have not been brought on record despite last opportunity and, thus, the appeal qua them was dismissed on 28.7.2016.

According to the findings and the relief sought, particularly once there is a reference to the documents showing the appellant to be in possession, no reasons have been recorded for declining the relief as the judgment relied upon is in respect of the suit for possession and declaration, whereas the present suit is for injunction. For the purpose of injunction, only the long, settled and uninterrupted possession is to be seen. There is no reference to the documents alleged to have been rebutted by the defendants. In my view, the findings are not sustainable. The matter requires re-determination as it would take away the statutory right of the parties to the lis.

For the foregoing reasons, the impugned judgment and decree of the Lower Appellate Court is hereby set-aside. The matter is remitted back to the Lower Appellate Court with a direction to decide the appeal afresh in accordance with law. Effort shall be made by the Appellate Court to effect the service upon the respondents.

Parties, through their counsel, are directed to appear before the Lower Appellate Court on 12.1.2017.

Appeal stands disposed of.

December 09, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No