

RSA-1026-2012

1

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-1026-2012

Date of decision : 15.02.2016

Samsu @ Shamsu

... Appellant

Versus

Tilla Ram and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashish Gupta, Advocate
for the appellant.

REKHA MITTAL. J.

The present appeal has been directed against consistent findings recorded by the Courts below whereby the suit filed by the respondents was decreed to the extent that the revenue entries in the name of defendant/appellant, in the column of cultivation of suit land, are declared as illegal, null and void and liable to be corrected and further the respondents are declared as owners in possession of suit land. The judgment and decree passed by the trial Court has been affirmed in appeal, preferred by the present appellant.

Counsel for the appellant contends that though the trial Court has held while disposing of issues No.1 to 3 that all these issues are decided in favour of the plaintiffs and against the defendant but in operative part of the judgment i.e. relief under issue No.8, the suit of the

respondents qua relief of injunction has not been decreed. It is further submitted that the Court in appeal has affirmed the findings of the trial Court on issues No.1 to 3 but did not modify the judgment and decree passed by the trial Court in regard to prayer of the plaintiffs/respondents seeking injunction against interference in their alleged possession of the suit land. It is further submitted that in the guise of judgment and decree passed by the learned trial Court, the plaintiffs/respondents may initiate execution proceedings or otherwise interfere in possession of the suit land by the appellant.

Counsel for the appellant, however, is not in a position to successfully assail the findings that entries in the jamabandis and khasra girdawaris in the name of the defendant/appellant are liable to be set aside having been made in violation of the instructions issued by the Financial Commissioner, Haryana when otherwise there is no dispute between the parties that the respondents are the owners of the suit land.

I have heard counsel for the appellant and perused the records.

The learned trial Court had taken up issues No.1 to 3 together for discussion and decision. After making discussion in paras 11 to 15, the Court has held in paras 16 & 17, reads thus:-

“16. From the above discussion, it is clear that neither the plaintiffs nor their predecessors-in-interest inducted the defendant as tenant over the suit property. It is further clear that before making change in Khasra

Girdawari qua induction of the defendant as tenant in the suit land, no notice was given to the plaintiffs or their predecessors in interest. Therefore, at the time of making change in the khasra girdawari, proper procedure prescribed was not adopted and change in entries in Khasra Girdawari were made in violation of instructions issued by the Financial Commissioner, Haryana and therefore, the said entries are liable to be declared as illegal, null and void.

17. In view of the aforesaid discussions and circumstances, it can be held that the name of defendant is wrongly entered into the revenue record qua the suit land and he cannot take advantage of wrong entries in the revenue record. It can further be held that the plaintiffs are owners in possession of the suit land and they are also entitled for relief of injunction. Accordingly, all these issues are decided in favour of the plaintiffs and against the defendant.”

Though the Court has held that neither the plaintiffs nor their predecessors in interest inducted the defendant as tenant over the suit property but it appears that the Court has not decided as to who is in possession of the suit property at the spot. Similarly, neither in the operative part of the judgment nor in the decree, any relief has been granted in respect of prayer for permanent injunction or alternative relief for possession. That being so, the appellant may take recourse to appropriate remedy, in accordance with law to take care of his apprehension expressed by his counsel.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed. No order as to costs.

(REKHA MITTAL)
JUDGE

February 15, 2016.
Davinder Kumar