

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

RSA-4515 of 2013 (O&M)

Date of decision: 28.01.2016

Banney Singh and others

...Appellants

Versus

Nand Kishore and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. Kul Bhushan Sharma, Advocate  
for the appellants.

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**Jitendra Chauhan, J. (Oral)**

The plaintiffs/appellants filed suit for declaration with consequential relief of permanent injunction. The trial Court vide judgment and decree dated 30.09.2011, dismissed the suit.

2. Aggrieved against the findings of trial Court, the plaintiffs/appellants filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 29.04.2013.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the

oral as well as documentary evidence on record, hence, the instant appeal at the behest of the plaintiffs/appellants.

4. It is contended by learned counsel for the appellants that both the Courts below have gravely erred while passing the impugned judgments and have failed to appreciate the fact that the defendants No.1 and 2 and their predecessors in interest were the dholidars who were permitted to cultivate the land in question so long as they render the assigned religious services to the plaintiffs or their predecessors in interest. Defendants No.1 & 2 had migrated to another village, leaving the land unattended and handing over the possession of the same to the plaintiffs/appellants a while ago and since then, the plaintiffs are the owner in possession of the land in question. The learned counsel further contends that the dholidars have not their rendered services and they are not cultivating the land in question, therefore, they have no right to execute any lease deed in favour of defendant No.3. Further, the defendants No.1 & 2 had been proceeded against ex parte by the Courts below, therefore, it can be safely said that they had failed to rebut the claim of the plaintiffs/appellants as they had no interest over the land in question. The learned counsel has placed reliance upon

**Dharam Vir** Vs. **Bahadur Singh and another**, 2007(2) RCR (Civil) 217 to contend that the dholidars cannot lease out the land to other persons and if it is leased out to other persons, it is open to the owner to resume the possession of the same against whom no claim can be entertained. The learned counsel also cites **Sahdev Singh** Vs. **Lakshmi Chand**, 2003(1) RCR (Civil) 300, **Ghisa Ram** Vs. **Surat Singh**, 2003(4) RCR (Civil) 23, **Shri Sheo Nath and others** Vs. **Ram Narain and another**, 2008(3) RCR (Civil) 36 and **Dharam Singh and others** Vs. **Smt. Phullan Devi and others**, 2005(3) RCR (Civil) 832.

5. I have heard the rival contentions of learned counsel for the appellant.

6. The plaintiffs/appellants had claimed that the defendants No.1 and 2 were dholidars and the land in question was given to them subject to their performing of the religious duties and functions. The plaintiffs/appellants had alleged that the dholidars had stopped performing the religious duties and had shifted to other village leaving behind the land unattended and the land had been given to the plaintiffs/appellants. However, there is nothing on record to show that the defendants were dholidars and the land in question was handed over to them

for performing religious duties for a certain period of time. Further, no document has been brought on record to justify their claim that their predecessors had given the land to the predecessors of the defendants about two decades ago and the defendants had migrated to another village leaving behind the suit land unattended. DW-2, Mani Ram had also deposed that the defendant No.3 and others are in possession of the disputed land and before them, their forefathers were in possession as Pattedaar. He further deposed that the plaintiffs have no concern with the suit land. Therefore, in the given facts and circumstances of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties. Therefore, this Court finds that the contentions have no merit as they only relate to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. In **Kashmir Singh** Vs. **Harnam Singh and another**, 2008(2) RCR (Civil) 688, it has been held as under:-

*“17. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”*

7. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. The case law cited by the learned counsel is distinguishable on the facts and will not apply in the present case. Hence, no interference is called for.

Dismissed.

28.01.2016

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**(JITENDRA CHAUHAN)**  
**JUDGE**