

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

R.S.A No.3109 of 2016 (O&M)

Date of decision :12.08.2016

Kawal Singh and others

..... Appellants

Versus

Raj Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Ravinder Malik, Advocate
for the applicants-appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 17.03.2016 passed by the learned Additional District Judge, Rohtak, whereby the appeal filed by appellants-defendants against the judgment and decree dated 02.03.2012 passed by the learned Civil Judge (Jr. Division), Rohtak, has been dismissed with modification of the relief.

2. The plaintiffs-respondents have filed the suit for declaration with consequential relief of permanent injunction on the grounds *inter alia* that they are proprietors of Village Sanghi, Tehsil and District Rohtak and have share in the shamlat in Pana Asraan and Dudhian of village Sanghi. They and prior to them their ancestors were in possession of the suit land as co-sharer in Shamlat. The dispute regarding title is pending before the Collector, Rohtak in the suits titled as 'Mahender etc. Vs. G.P' and 'Mahabir etc. Vs. G.P'. It is further pleaded that they are legally entitled to protect their possession over the suit land unless they

are evicted in due course of law by the Tribunal. However, the defendants are adamant to interfere in their peaceful possession. Hence the suit.

3. Appellants-defendants contested the suit by filing the written statement wherein they denied that plaintiff-respondents are in possession over the suit property. It was further pleaded that the land of Pana Shamlat stands partitioned and co-sharers are in possession of their respective shares. It was further pleaded that the share of plaintiffs in the land of Pana Dudhian and Pana Tihai is only 2 Kanals and they are in possession of the land of said Pana Shamlat to that extent. It is further pleaded that plaintiff no.1-Raj Singh has filed a false criminal complaint alleging their forcible possession. But the same was dismissed by the Court. With these pleas, appellants-defendants pleaded for dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are in physical possession over the land as stated in para no.3 of the plaint?OPP
2. Whether the plaintiffs are entitled for injunction?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form?OPD
4. Whether the plaintiffs have no cause of action to file the present suit?OPD
5. Whether the plaintiffs have suppressed the material facts from the Court?OPD
6. Relief.

5. On appreciating the evidence adduced by the parties and contentions raised by their counsels, the learned trial Court held the plaintiffs-respondents to be in possession over the suit property and appellants-defendants were restrained from interfering in their possession over the suit property. Thus, the suit filed by the plaintiffs was decreed

vide impugned judgment and decree dated 02.03.2012.

6. Aggrieved with the aforesaid judgment and decree passed by the learned trial Court, defendants preferred the appeal. The appeal filed by them was also dismissed with modification in the relief clause. Hence this Regular Second Appeal.

7. Along with the appeal, the applicants-appellants have also moved an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (for short C.P.C) for producing the additional evidence in the shape of the copy of mutation (Annexure A-1) and the copy of the order passed by the learned Addl.Chief Judicial Magistrate, Rohtak dated 16.04.2004.

8. I have heard Mr. Ravinder Malik, Advocate, learned counsel for applicants-appellants and have carefully gone through the paper book.

9. Initiating the arguments, learned counsel for the applicants-appellants contended that the plaintiffs-respondents are not in possession of the suit property. The appellants have filed the application for additional evidence to produce in evidence the copy of the order dated 16.10.2004 passed by the learned Addl. Chief Judicial Magistrate, Rohtak, wherein it has been categorically held that the plaintiffs were not in possession of the land in dispute. He further contended that the suit land has already been partitioned by the order of Assistant Collector Ist Grade, Rohtak and even mutation to this effect has been entered and sanctioned. The suit land had fallen to the share of appellants. So, the plaintiffs are not entitled for any injunction.

10. I have duly considered the aforesaid contentions.

11. Firstly, I take up the application No. CM No. 8356-C of 2016 filed by appellants for additional evidence. Appellants wants to produce in additional evidence the copy of the order dated 16.10.2004 passed by the learned Addl. Chief Judicial Magistrate, Rohtak vide which the complaint filed by plaintiff no.1-Raj Singh under Sections 382, 392, 341, 506 read with Section 34 of Indian Penal Code on the allegations that the accused persons named in that complaint had forcibly entered in their possession. They reaped the mustard crops, loaded the same in tractors and took away their crops. The said complaint has been dismissed on the ground that the said land was attached and Tehsildar, Rohtak was appointed as a Receiver. So, the complainant was not in possession thereof. But, in the instant case, in the written statement filed by the appellants, no plea has been raised that the land in dispute was under attachment and Tehsildar, Rohtak was looking after the land as receiver. It may be possible that the order appointing Tehsildar, Rohtak as a Receiver might have been later on vacated. The appellants have not placed on record the copy of the order vide which the suit land was attached and Tehsildar was appointed as Receiver. There is also no material on record to show as to what happened to those proceedings. It may be possible that those proceedings might had come to an end. Moreover, it is settled principle of law that the judgment of the criminal Court is not binding on the Civil Courts in view of the difference in the standard of proof. So, the copy of this order is not required by this Court to enable it to pronounce the judgment or for any other substantial cause. Moreover, this copy of the order was very much available to the

appellants even during the pendency of the suit and no satisfactory explanation has been given as to why the copy of this order not could be produced before the trial Court in-spite of exercising the due diligence.

12. The second document required to be produced in the additional evidence is copy of mutation of partition entered on the basis of the order passed by the Assistant Collector Ist Grade, Rohtak. This mutation has been sanctioned on 22.05.2011 i.e. during the pendency of the suit and will have no bearing on the merits of the case.

13. So, the application moved by the applicants-appellants for additional evidence is without any merit and the same is hereby dismissed.

14. Let us now take up the main case. The copy of mutation (Annexure A-1) brought on record by the appellants itself contradicts the stand of the appellants in the written statement. In the written statement, they have pleaded that the land of Pana Shamlat already stands partitioned and co-sharers are in possession of their respective shares. Whereas, the mutation (Annexure A-1) shows that the partition has been ordered by Tehsildar, Rohtak in case No. 78/T dated 15.03.2011 and mutation with respect to the partition has been entered and sanctioned on 22.05.2011. So, this mutation with respect to the partition of the land has come into existence during the pendency of the suit.

15. This fact is not disputed that the plaintiffs-respondents are also the proprietors of the village and are having share in the Shamlat land. The oral as well as documentary evidence brought on record shows their possession over the land in dispute. Ex.P-3 to Ex.P-16 are the copies

of Jamabandies wherein the ancestors of the plaintiffs have been recorded to be in continuous possession of the land in dispute since the last four decades. It is settled principle of law that a co-sharer in exclusive and established possession is entitled to protect the possession till the partition takes place. Thus, certainly, the plaintiffs-respondents who are proved to be in possession of the land in dispute cannot be dispossessed forcibly and illegally. The only course open to the appellants is to obtain the possession in due course of law. Learned First Appellate Court has already modified the consequential relief with respect to the decree of permanent injunction restraining the appellants-defendants from interfering in the possession of the plaintiffs over the land except in due course of law. So, the appellants can avail the appropriate legal remedy available to them in accordance with law.

16. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

17. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with costs.

August 12, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No