

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2353 of 2015

Date of Decision: 11.01.2016

Des Raj and Others

... Appellant(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Manmohan Singh Kang, Advocate
for the appellant(s).

Shekher Dhawan., J.

Present regular second appeal against concurrent findings of both the courts below, whereby suit filed by the plaintiffs for permanent injunction was dismissed and the appeal filed before First Appellate Court was also dismissed. For the sake of convenience, the facts are being referred to as per the suit before the Court of first instance.

The plaintiffs filed a suit for permanent injunction restraining respondents No. 1 & 2 from interfering in their possession over the suit land. As per the plaintiffs, Lakha Singh was cultivating the suit land and this fact was recorded in the revenue record and his

possession was shown in the capacity as "*Gair Marusi*". After the death of Lakha Singh, the plaintiffs stepped into his shoes being his legal heirs and as such their possession was lawful over the suit land. The plaintiffs had raised construction on the part of the land which consisted of eight rooms of four khana each and four rooms of eight khana each. The construction of Haveli was also raised on the suit land. However, the defendants threatened to dispossess the plaintiffs from the suit land forcibly and as such suit before the Court of first instance.

The defendants contested the suit taking the plea that the plaintiffs are neither the owner of the suit land nor in possession of the suit property. Their possession has also not been recorded in the latest revenue record. More so, the suit is not maintainable.

After framing of issues, both the parties led their respective evidence. The Court of first instance returned the findings that the plaintiffs were earlier in unlawful possession and subsequently they were dispossessed from the suit land. More so, the suit property has already been declared as Protected Forest as admitted by Lachhman Singh, one of the witnesses examined by the plaintiffs and dismissed their suit.

The first appeal filed by the plaintiffs was also dismissed by the Court of First Appeal and as such present regular second appeal before this Court.

Learned counsel for the appellants fairly conceded that the plaintiffs are not the owner of the suit property. However, they are in established possession of the suit land and thus, the present suit being

suit for permanent injunction could not be dismissed by the Courts below because law on the point is settled that the party in established possession of any immovable property can be dispossessed only in accordance with law. By now the plaintiffs have not been dispossessed from the suit land. The Courts below have completely ignored this law. Thus, the present appeal be accepted and judgment & decree be set aside.

Having considered the submissions made by learned counsel for the appellants and on appraisal of the records available on the file, this Court is of the considered view that the controversy involved in the matter is short and simple. The appellants are not the owner of the suit property. The same belongs to the State Government and more specifically of Forest Department. The suit property is a Protected Forest. The plaintiffs were earlier recorded in revenue record to be in unauthorized possession of the suit property and subsequently they were dispossessed forcibly therefrom and the possession was taken over by the Forest Department vide Rapat Roznamcha No. 465 dated 20.7.1999. Appeal against the said order was also dismissed by the Commissioner, Jalandhar Division, Jalandhar vide order dated 25.9.2001 (Ex.P8). In the earlier jamabandis for the years 1973-74 and 1994-95, the possession was shown to be of the plaintiffs but that was in the capacity of "*Gair Marusi*" and the possession was illegal possession. Thereafter, the plaintiffs were dispossessed from the suit land in accordance with law. As the suit land is protected forest, law on the point is settled that a person in unauthorized possession is not

entitled to possession. Both the courts below have also appreciated the evidence available on file and returned concurrent findings on this point. There is absolutely no substantial question of law involved in this case and as such, present appeal is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

January 11, 2016
"DK"