

C.M. NOS.7149-50 C OF 2015
R.S.A. NO.2978 OF 2015 (O&M)

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

R.S.A. NO.2978 OF 2015 (O&M)
DATE OF DECISION: APRIL 27, 2016

Bachan Singh

.....Appellant

VERSUS

State of Haryana and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. Jitender Malik, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.7149 C of 2015

Prayer in this application is for condonation of delay, if any,
filed in the present appeal.

Counsel for the applicant-appellant states that though the applicant-appellant approached him in the last week of May 2015 for filing the appeal but since he had to go out of station and thereafter the summer vacations started, he could not file the same during that period. He further states that he was under a bonafide belief that during vacation, the limitation will be continued and, thus, he prays that since there is no delay as per him, the application may be dismissed as not pressed.

As per request, the application is dismissed as not pressed.

R.S.A. No.2978 of 2015

Challenge in this appeal is to the judgment and decree dated 07.01.2011 passed by the Civil Judge (Junior Division), Hisar, whereby the suit for injunction preferred by the appellant-plaintiff for prohibitory and mandatory injunction, alleging that he is in cultivating possession of the land measuring 100 kanals, 0 marlas comprised in Khewat No.702, Khatauni No.470, as per jamabandi for the year 1986 situated within the revenue estate of Village Beed Hisar, Tehsil and District Hisar, as detailed and described in the head note of the plaint as Gair Marusi tenant, has been dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the District Judge, Hisar, on 12.03.2015.

It is the contention of learned counsel for the appellant that although the subsequent revenue entries have been manipulated by the respondent-defendants in their favour without giving any notice to the appellant-plaintiff, changing the jamabandies in their favour, showing themselves to be in cultivating possession of the suit land in favour of the respondent-defendant No.2 (Forest Department) but in some of the earlier jamabandies and revenue records, the appellant-plaintiff is shown to be in cultivating possession of the suit land. He contends that even the sole witness DW1 Hari Singh, Range Forest Officer, in his cross-examination has admitted the appellant-plaintiff to be in possession of the suit land. He, thus, contends that the Courts below have wrongly proceeded to dismiss the suit of the appellant-plaintiff. As regards the dismissal of the suit being barred by principle of resjudicata, counsel contends that the State Government was only a proforma party and the observations made in the suit were only relatable for verification purpose as the primary dispute was

between the appellant-plaintiff against Suraian Singh and Darshan Singh. He, thus, contends that the judgments and decree as passed by the Courts below cannot sustain and deserve to be set-aside.

I have considered the submissions made by learned counsel for the appellant and have gone through the records of the case.

It is apparent from the pleadings and the evidence brought on record by the parties that the revenue entries clearly depict that the State Government is the owner of the suit land and the respondent-defendant (Forest Department) is in cultivating possession of the suit land. Though an assertion has been made by counsel for the appellant that the revenue entries being relied upon by the respondent-defendants are contrary to the factual position at the spot but keeping in view the fact that there is no challenge to the revenue entries, the Court cannot proceed on the assumption that the revenue records are not correct. The appellant-plaintiff, if aggrieved, should have availed of his remedy in accordance with law against the said revenue entries as have been relied upon by the respondent-defendants. That apart, the oral evidence cannot substitute the documentary evidence, which is in the form of revenue record and, therefore, the admission on the part of DW1 Hari Singh, Range Forest Officer, would not be of much help to the claim of the appellant-plaintiff as the onus was primarily on the appellant-plaintiff to establish his possession over the suit land.

It is not in dispute that earlier a suit was filed by the appellant-plaintiff against Suraian Singh, Darshan Singh and State Government, which was for injunction, restraining the respondent-defendants from interfering in the peaceful possession of the suit land. Issue Nos.1 and 2 in the said suit were identical to the one in the present suit. In that suit, it was

held that the appellant-plaintiff is not Gairmarusi tenant in the suit land. Since a categoric finding has been returned against the appellant-plaintiff in this regard, he cannot now assert himself to be a garmarusi tenant over the suit land and claim possession as such. The suit has rightly been held to be barred by the principle of resjudicata. The judgments and decree, therefore, as passed by the Courts below cannot be faulted with.

No other point has been argued by learned counsel for the appellant-plaintiff.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.7150 C of 2015 for restraining the contesting respondent from selling/alienating/mortgaging the suit property to any other person in any manner is also dismissed.

April 27, 2016
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(AUGUSTINE GEORGE MASIH)
JUDGE