

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
111**

C.M. No. 10170-C of 2015 &
RSA No. 4200 of 2015

Date of Decision: 16.03.2016

Radhey Shyam and others

.....APPELLANTS

VERSUS

The Collector, District Panipat and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Kamal Sharma, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division) Samalkha dated 12.08.2014, whereby the suit preferred by the appellants-plaintiffs for declaration to the effect that office order No. 612/SP dated 22.12.2011 passed by the Sub-Divisional Officer (Civil)/Sub-Divisional Magistrate, Samalkha on an application moved by the respondents-defendants No. 4 and 5, Ved Pal and Sat Narayan sons of Ram Singh, whereby the possession over the agricultural suit land comprised in Khewat No. 250//22, Khatoni No. 311, Rect. No. 21, Khasra No. 20/1/1 and 20/2/2, situated in Village Passina Khurd, Tehsil Samalkha, District Panipat and for permanent injunction restraining the respondents-defendants from dispossessing the plaintiffs from the above-mentioned suit land and from interfering in the

continuous, peaceful, uninterrupted possession, stands dismissed, appeal against which preferred by them has also been dismissed by the Additional District Judge, Panipat on 05.08.2015.

2. It is the contention of the learned counsel for the appellants that the grandfather of the appellants-plaintiffs and respondents-defendants No. 4 and 5 was Sh. Ikram, who was owner-in-possession of the ancestral agricultural land situated in Village Sewah, District Panipat. After his death, his four sons, namely, Devi Singh (father of plaintiff No. 1), Sobha Ram (father of plaintiffs No. 2 and 3), Ram Singh (father of defendants No. 4 and 5) and Roop Chand inherited the property to the extent of their 1/4th share. Out of the agricultural income, 44 Bigha and 2 Biswa in Village Pasina Khurd was purchased vide vasika No. 651 dated 03.06.1957. Mutation No. 726 was entered and sanctioned on the basis of the sale deed in the name of all four brothers on 01.08.1957. Another piece of land measuring 2 Bigha and 5 Biswa was purchased in the same village i.e. Pasina Khurd vide sale deed bearing vasika No. 709 dated 08.04.1959. The said sale deed was got executed and registered by Ram Singh, father of respondents-defendants No. 4 and 5 in his name. The mutation was accordingly sanctioned.

3. In the month of March, 1984, an oral exchange took place between Devi Chand, father of plaintiff No. 1 and Sobha Ram, father of plaintiffs No. 2 and 3, Ram Singh, father of defendants No. 4 and 5 and Roop Chand. Ram Singh, father of defendants No. 4 and 5 took all the ancestral agricultural land adjacent to G.T. Road, which was of higher value in comparison to the agricultural land situated in Village Pasina Khurd, which went to the share of the father of the plaintiffs and their fathers'

brother Roop Chand. Father of respondents-defendants No. 4 and 5, namely, Ram Singh relinquished all his rights in the entire suit land situated in Village Pasina Khurd including the suit property. In pursuance to the said oral exchange in March, 1984, the predecessors-in-interest of the appellants-plaintiffs continued in peaceful possession of the suit property being absolute owners without any objection having been raised by the respondents-defendants.

4. Counsel contends that an application was filed by the respondents-defendants No. 4 and 5 before the revenue authorities seeking possession of the suit land on the basis of the mutation sanctioned in their favour as per the sale deed dated 08.04.1959 registered in favour of Ram Singh, their father. On the basis of the said application, a demarcation was got done of the land comprised in Khasra No. 20/1/1 and 20/2/2, situated in the revenue estate of Village Passina Khurd. The demarcation was conducted on 06.12.2011 by the Naib Tehsildar, Bapoli, District Panipat and as per the said demarcation report, the appellants-plaintiffs were found to be in illegal possession of the land in dispute. On the basis of the said demarcation report, the Sub-Divisional Officer (Civil)/Sub-Divisional Magistrate, Samalkha passed the order dated 22.12.2011, whereby the possession was ordered to be delivered to the respondents-defendants No. 4 and 5. This order dated 22.12.2011 is asserted to have been passed by the Sub-Divisional Officer (Civil)/Sub-Divisional Magistrate, Samalkha without giving notice to the appellants-plaintiffs and, therefore, can be challenged in a civil suit. He further contends that since the possession of the suit land has been with the appellants, the findings, as recorded by the Courts below, cannot sustain and deserve to be set aside and the suit for

declaration and consequential injunction, as prayed for, should have been granted.

5. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments but do not find any illegality in these judgments which would call for interference by this Court.

6. The Courts below have rightly put the onus upon the appellants-plaintiffs with regard to proving the oral exchange in the year 1984, as has been asserted. It is an admitted fact that as per the sale deed bearing vasika No. 709 dated 08.04.1959, the land contained in Khasra No. 20/1/1 was purchased by Ram Singh and the same existed as such, even the mutation was sanctioned in his favour. The assertion is that an oral exchange had taken place in the month of March, 1984 but the same has not been reflected in the revenue records. In the absence of any evidence which would establish the oral exchange, especially when the same has not reflected in the revenue records, the said assertion has rightly been rejected by the Courts below. The appellants-plaintiffs are, therefore, merely in illegal possession of the suit land.

7. The respondents-defendants are owners-in-possession of Rect. No. 21, Killa No. 20/1/1 measuring 3 Kanal and 2 Marlas as per jamabandi for the year 2008-2009 Ex. P1 and are also shown to be in possession of the said land and, therefore, it cannot be said that the declaration, as prayed for, could have been granted by the Courts below. Since the appellants-plaintiffs are claiming themselves to be the owners as per the oral exchange of March, 1984, they cannot take the plea of adverse possession when they are themselves asserting their ownership right over the specific property.

8. It could not be disputed by the counsel for the appellants that the remedy of appeal is available to the appellants against the impugned order dated 22.12.2011 passed by the Sub-Divisional Officer (Civil)/Sub-Divisional Magistrate, Samalkha, which remedy, admittedly, has not been availed of by the appellants-plaintiffs and, therefore, the observation of the Courts below that the civil suit would not be maintainable is fully justified. Respondents-defendants No. 4 and 5 have adopted a legal process seeking restoration of possession by approaching the competent revenue authority and the appellants instead of availing of their remedy available to them in law i.e. filing an appeal by approaching the competent revenue authority have tried to misuse the process of Court by resorting to filing the present suit. Further, the appellants-plaintiffs have not been able to establish their ownership over the disputed land and, therefore, the declaration, as prayed for, has rightly been declined by the Courts below.

9. No other point has been raised or argued by the counsel for the appellant-plaintiff.

10. There being 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, there is no illegality in the impugned judgments passed by the Courts below.

11. There is no substantial question of law in the present appeal, which requires consideration of this Court.

12. In view of the above, finding no merit in the appeal, the same stands dismissed.

C.M. No. 10170-C of 2015

In view of the dismissal of the main appeal, no separate orders

are required to be passed in this application for stay and, therefore, the same stands dismissed.

March 16, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**