

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 1771 of 2014 (O&M)

Date of decision: May 18, 2016

Jagdish Singh

...APPELLANT

Versus

Balbir Singh

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. H.S.Grewal, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division) Mansa, dated 31.10.2012, whereby the suit for permanent injunction filed by the respondent-plaintiff against the appellant-defendant restraining him from interfering and dispossessing the plaintiff illegally and forcibly except in due course of law from the land measuring 31 Kanals 10 Marlas, as detailed in the suit, has been decreed as he has been able to establish that as per the revenue records, he is in possession of the suit land as a tenant, appeal against which preferred by the appellant-defendant has been dismissed by the District Judge, Mansa on 02.12.2013.

2. It is the contention of the learned counsel for the appellant that the finding, as recorded by the Courts below that the respondent-plaintiff is

in possession of the suit land as a tenant, is not sustainable in the light of the assertion of the respondent-plaintiff in his cross-examination that he is owner of the suit property. If he is a co-sharer and it has also come on record that partition proceedings have been initiated by the appellant-defendant against the respondent-plaintiff, he cannot be a tenant of the land in dispute. He, thus, asserts that the judgments and decree, as passed by the Courts below, cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

4. It is apparent from the pleadings that the respondent-plaintiff did not assert himself to be the owner of the suit property rather he has claimed himself to be a tenant and in support thereof, he has placed reliance upon the judgment passed in Civil Suit No. 25 of 24.01.2003 decided on 18.08.2006, wherein suit filed by the respondent-plaintiff against Harbans Kaur and Darshan Singh, the predecessors-in-interest of the appellant-defendant, was decreed by holding him to be in possession of the suit land as per Rapat dated 08.11.2002, according to which, the respondent was holding possession over the suit land as a tenant. That apart, Jamabandis have been placed on record, according to which, the respondent is mentioned to be in possession of the suit land as a tenant. Therefore, the finding, as recorded by the Courts below, cannot be faulted with as the same is based upon the judgment dated 18.08.2006 (Ex. PX) as also the Jamabandis.

5. The assertion of the counsel for the appellant that the respondent is claiming himself to be the owner of the suit land and,

therefore, the finding that he is a tenant over the suit land, again cannot be accepted in the light of the fact that there is no pleading to that effect by the respondent-plaintiff. He has asserted himself to be in possession of the suit land as a tenant and merely because in the cross-examination, he has stated that he is owner, cannot be accepted to be his positive assertion with regard to his status over the suit land. This assertion, thus, is devoid of merit and cannot be accepted. The findings, as recorded by the Courts below, therefore, cannot be faulted with.

6. No other point has been raised or argued by the counsel for the appellant.

7. 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.

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

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

May 18, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE