

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

RSA No.4896 of 2015

Date of decision: 01.02.2016

Varinder Singh and another

... Appellants

Versus

Arjan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr.Parminder Singh Rai, Advocate,
for the appellants.

AMOL RATTAN SINGH, J.

1. This is the second appeal filed by the defendants in a civil suit filed by the respondent, seeking permanent injunction restraining them (present appellants) from causing any forcible, illegal and unauthorised interference in the peaceful cultivating possession of the respondent-plaintiff and his brother Darshan Singh, who were stated to be cultivating the suit land as “Gair-Marusi”, except in the due course of law.

The suit of the respondent having been decreed and the first appeal filed by the present appellants, before the learned Additional District Judge, Fazilka, having been dismissed, the present appeal has been filed, assailing the said judgments and decrees, the former of which is dated 15.11.2013 and the latter, 21.02.2015.

2. The case set up by the respondent-plaintiff before the learned Civil Judge (Senior Division), Fazilka, was that the suit land, measuring 20

Kanals, is owned by the provincial Government and that the respondent-plaintiff and his brother, Darshan Singh, are in possession of the same as “Gair-Marusi” for more than ten years, with their possession duly reflected in the revenue record, i.e. in the 'khasra girdawaris' and 'jamabandis'.

The appellants (defendants) though strangers to the suit land, hatched a criminal conspiracy and started unlawful interference in the possession of the respondent and tried to dispossess him by force, but were unsuccessful due to the intervention of respectables of the locality. The appellants-defendants not restraining from again trying to take possession of the land, the respondent filed the suit from which these proceedings arise (hereinafter to be referred to as the suit).

3. The appellants, in their written statement, took a preliminary objection that as per an affidavit dated 23.05.2006, sworn by Darshan Singh, brother of the respondent, he had acknowledged that a part of the suit land, measuring 13 Kanals (contained in Killa Nos.8 (4-0), 13 (8-0), 18(1-0) of Rect. No.49), was in the possession of Balwinder Kaur, (wife of appellant No.2) and that he had no objection to the correction of the 'khasra girdawari' in her favour.

It was also stated that, accordingly, an application for correction of the 'khasra girdawari' had been made by appellant No.1 (son of appellant No.2 and Balwinder Kaur), to the Assistant Collector, 2nd Grade, Fazilka, which was still pending.

On merits, all the averments made by the plaintiff were denied.

4. On framing the necessary issues of entitlement of the plaintiff for the injunction, on any concealment of material facts from the Court and the effect thereof, and the maintainability of the suit, the learned Civil Judge

heard the oral evidence and appraised the documentary evidence and thereafter, decreed the suit as already said, in favour of the respondent herein.

5. The plaintiff-respondent stepped into the witness box himself and also examined one Sukhdev Singh. He also proved his own affidavit supporting the contentions made in the plaint and further, he proved the 'jamabandi' (Record of Rights) for the year 2004-05 as Ex.P1 and the 'khasra girdawaris' from the season of 'Kharif' 2005 to the season of 'Rabi'/'Hari' 2013, in all of which his own name and that of his brother, Darshan Singh was shown in the column of cultivation. PW2 is also shown to have supported the case of respondent-plaintiff in toto, including by submitting an affidavit to that effect.

The appellants-defendants examined one Jagtar Singh as DW1, appellant No.2 Sukhdev Singh as DW2 and also one Balvir Singh, as DW3.

Though these witnesses supported the case of the appellants, however, the 3rd witness, is stated to have admitted in his cross-examination, that the appellants never actually took possession of the suit land from the respondent.

6. The learned Civil Judge, while noticing that the ownership of the land is that of the provincial Government, and attaching a presumption of truth to the entries in the record of rights, showing the respondent-plaintiff and his brother to be in possession of the land, as also the fact that the appellants, other than their bare assertion to the effect that they were in possession, could not prove such possession, even as per the statement of their own witness (DW3). Further, that Court held that they could not show as to when and how they came into possession of the suit land. Even with regard to the affidavit dated 23.05.2006, of the respondent-plaintiffs' brother,

Darshan Singh (Mark-DA before the trial Court), it was held that it had not been proved by either production of Darshan Singh, or in any other manner, that possession had actually been delivered to Balwinder Kaur.

Consequently, the suit of the respondent-plaintiff was decreed, restraining the appellants from interfering in his peaceful possession thereof, except in due course of law.

The first Appellate Court, on identical reasoning, also dismissed the suit of the appellants.

7. Mr. Parminder Singh Rai, learned counsel for the appellants, submitted that there was non-joinder of a necessary party, inasmuch as, the brother of the respondent-plaintiff, Darshan Singh, had not been impleaded in the suit filed by the respondent and further, no issue was framed by the learned Civil Judge as to whether or not any payment had been made by the appellants to Darshan Singh, on account of which possession of the suit land was transferred to the appellants.

Hence, he submitted that the courts below had wholly erred in appreciating the evidence produced by the appellants and as such, the appeal deserves to be allowed and the suit of the respondent is dismissed.

On specific query by this Court as to whether any application for framing of additional issues was filed by the appellants and if any revision petition against dismissal of such application was ever preferred, learned counsel submitted that he could not answer that in the affirmative.

8. Keeping in view the above and the fact that the suit filed by the respondent-plaintiff was only for permanent injunction restraining the appellants from interfering in his possession of the land, except in the due course of law, I see no reason whatsoever to interfere with the judgments and

decrees of the courts below.

To seek a decree of permanent injunction against the appellants, the respondent-plaintiff had only to prove his possession over the suit land, which he duly did by producing documentary evidence in the form of revenue record, which could not be rebutted by the appellants. The affidavit allegedly sworn by the respondents' brother, to the effect that he had actually handed over the possession to Balwinder Kaur (mother of appellant No.1 and wife of appellant no.2) could also not be proved by the appellants and in fact, even their own witness, DW3-Balvir Singh, admitted that the appellants-defendants actually never took possession of the suit land.

9. Even though, on cross-examination, the respondent-plaintiff admitted that his brother had sworn the affidavit relied upon the appellants (though he gave the date thereof to be 15.05.2006), that, however, did not prove that he had delivered actual possession to Balwinder Kaur and consequent actual possession of the suit land by the appellants. It obviously seems that Darshan Singh (respondents' brother), did execute the affidavit but actually did not, or could not, hand over possession of the suit land to the appellants. Consequently, the courts below having found that possession of the suit land continued to remain with the respondent, correctly granted a decree of permanent injunction, restraining the appellants from interfering in his peaceful possession thereof, except in due course of law. Such finding, and the decree consequently granted, cannot be faulted.

10. Therefore, finding no merit in the present appeal, it is dismissed *in limine*, with no order as to costs.

01.02.2016

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VIKAS CHANDER
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I attest to the accuracy and
integrity of this document

(AMOL RATTAN SINGH)
JUDGE