

RSA-4919-2015

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-4919-2015

Date of decision : 10.02.2016

Pal Singh alias Satpal and another

... Appellants

Versus

Swaran Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Sarbjit Singh, Advocate
for the appellants.

REKHA MITTAL. J.

The present appeal lays challenge to the judgment and decree dated 07.05.2015 passed by the District Judge, Jalandhar, accepting the appeal of respondent Swaran Singh, reversing the judgment and decree passed by the trial Court and as a consequence, the suit filed by the appellants was ordered to be dismissed.

The case set up by the plaintiffs/appellants is that earlier all the five brothers including the plaintiffs had taken land from Punjab Wakf Board (in short 'the Board') as tenants in the year 1976-77 and they were cultivating the same in equal share. Tara Singh, one of the brothers passed away on 27.07.2008 and his share was divided amongst Gurdev Singh, Swaran Singh, Pal Singh and Charan Singh in equal shares i.e. 1/4th share each. Later, Charan Singh another brother died and his share was inherited

by Gurdev Singh, Swaran Singh and Pal Singh to the extent of 1/3rd share each. As such, Pal Singh and Gurdev Singh appellants are entitled to joint possession of the suit land to the extent of 2/3rd share whereas Swaran Singh is entitled to 1/3rd share. Further prayer is made that they are also entitled to use the electric connection installed in the land in dispute to the extent of 2/3rd share.

The respondent contested the claim of the appellants inter alia on the grounds that the suit is not maintainable; the appellants have no locus standi to file the suit. However, it is admitted that the property in dispute is ownership of the Board and the real owner of the property has not been impleaded as a party. It is further averred that Board has allotted land measuring 195 kanals 10 marlas to the parties as well as to their deceased brothers who cultivated the same. Tara Singh and Charan Singh were living with answering respondent and after their death, he has succeeded them and is in possession of land of their share. The land measuring 39 kanals 2 marlas had fallen to the share of each of the deceased brothers.

The controversy between the parties led to framing of following issues by the learned trial Court:-

1. *Whether plaintiffs are entitled for possession as prayed for?OPP*
2. *Whether the plaintiffs are entitled for mandatory injunction as prayed for?OPP*

3. *Whether plaintiffs have got no locus standi to file the present suit?OPD*
4. *Whether plaintiffs have cause of action to file the present suit?OPP*
5. *Whether plaintiffs are barred by their act and conduct from filing the present suit?OPD*
6. *Whether suit is properly valued for the purpose of court fee and jurisdiction?OPP*
7. *Whether suit is not maintainable?OPD*
8. *Whether plaintiffs have not come to the Court with clean hands?OPD*
9. *Whether plaintiffs have concealed the true and material facts from the Court?OPD*
10. *Whether suit is bad for mis-joinder and non-joinder of necessary parties?OPD*
11. *Relief.*

On due consideration of the issues framed for determination, evidence adduced on record and rival submissions made by counsel for the parties, the learned trial Court decreed the suit of the appellants holding that they are entitled to joint possession of 2/3rd share in the suit land as well as 2/3rd share in the electric connection in dispute with the observations that the decree will not affect rights of the Board regarding ownership of the land in dispute.

The appeal preferred by the respondent against the judgment and decree dated 14.01.2014 passed by the trial Court was allowed by the District Judge, Jalandhar and the suit of the plaintiffs/appellants was ordered to be dismissed with special costs of ₹5000/- recoverable from

both the parties in equal shares to be paid to the District Legal Services Authority, Jalandhar.

Feeling dissatisfied with the judgment and decree passed by the District Judge, Jalandhar, the present appeal has been preferred by the plaintiffs/appellants.

Counsel for the appellants would contend that the Court in appeal has reversed the judgment and decree passed by the trial Court primarily on the ground that the Board, the real owner of the property in dispute has not been impleaded as a party. It is argued that if the appellate Court was of the opinion that the Board was a necessary party for complete and effective adjudication of the matter in controversy, it could be impleaded as a party and allowed an opportunity to contest the claim of the appellants but for that reason, the suit should not have been dismissed.

Another submission made by counsel is that the respondent has not denied creation of tenancy in favour of all the five brothers by the Board and in absence of dispute regarding creation of tenancy, the Court in appeal has committed a gross error by holding that the appellants have failed to prove themselves to be tenants in the suit property or their entitlement to inherit tenancy rights of their deceased brothers namely Tara Singh and Charan Singh.

I have heard counsel for the appellants, perused the records particularly the judgments passed by the Courts below.

There is no denial that the land in dispute is owned by the Board. The appellants sought determination of their tenancy rights in the suit property at the back of real owner. The Court in appeal, on a detailed consideration of the materials on record in view of its discussion in paras 11 to 19 has held that the appellants failed to adduce satisfactory much less tangible evidence on record to substantiate their plea that they were inducted as tenants in the suit land or tenancy was heritable entitling them to seek declaration or joint possession.

Counsel for the appellants is not in a position to point out if the appellate Court has either ignored any evidence on record or committed any error by holding that the documents produced on record can not be looked into for want of admissibility being photo copies and merely marked as such.

In para 20 of the judgment, the observations made by the Court reads thus:-

“20. It seems that the parties are at collusion with each other and they want to obtain the relief without impleading and even without informing the real owner and the relief claim is not permissible under law.”

As the appellants failed to adduce evidence to prove that they were inducted as tenants in the suit land or had been paying any rent to the Board, the Court in appeal has rightly held that the appellants have failed to establish their claim in regard to tenancy of the suit land or entitled to joint possession to the extent of 2/3rd share. I do not find any

error much less illegality in the findings recorded by the appellate Court when otherwise no substantial question of law arises for adjudication.

As a consequence, the appeal fails and is accordingly dismissed in limine with no order as to costs.

(REKHA MITTAL)
JUDGE

February 10, 2016.
Davinder Kumar