

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

RSA-5129 of 2015 (O&M)

Date of decision: 12.01.2016

Parmesh Kumar

...Appellant(s)

Versus

Alka Sirivastav and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Sharma, Advocate,
for Mr. Rakesh Kumar Sharma, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

CM-12263-C-2015

For the reasons mentioned in the CM application, the same is allowed and the delay of 31 days in re-filing the present appeal is condoned.

Main appeal

The instant regular second appeal has been preferred against the judgment and decree dated 15.10.2013 passed by Additional Civil Judge (Sr. Division), Nuh (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been

dismissed; and judgment and decree dated 04.02.2015 passed by learned Additional District Judge, Mewat (for short, 'the first Appellate Court'), whereby, the appeal preferred by the plaintiff-appellant against the impugned judgment and decree dated 04.02.2015 of the trial Court, has been dismissed.

The plaintiff filed a suit for permanent injunction, restraining the defendants from dispossessing the plaintiff and from making any sort of interference in the peaceful possession of the plaintiff over the suit land detailed therein. The trial Court, vide impugned judgment and decree dated 15.10.2013, dismissed the suit after returning issue-wise findings that the plaintiff has failed to prove his possession to the extent of his share over the suit property. The documents relied upon by the plaintiff are surrounded by suspicious circumstances as the same have been executed after execution of the documents in favour of defendant no. 1. Further, the plaintiff and defendant no. 1 being gair Maurusi tenants, non-joining of the Gram Panchayat as necessary party is also fatal to the case of the plaintiff.

The appeal filed by the plaintiff was dismissed by the learned first Appellate Court, vide judgment and decree dated 04.02.2015. The learned first Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating

the oral as well as documentary evidence on record.

Hence, this appeal at the behest of the plaintiff.

Learned counsel for the appellant has submitted that the learned Courts below fell in error in not appreciating the documentary evidence, i.e. Ex.P-3, jamabandis for the year 2003-04; Khasra Girdawari for the year 2003-04 as Ex.P-4; copy of Rapat Roznamcha No.384 as Ex.P-5; Jamabandi for the year 2008-09 as Ex.P6 and Khasra Girdawari for the period from 24.10.2008 to 22.03.2009 as Ex.P-7, placed on record as well as in ignoring the settled preposition of law that the plaintiff being in settled possession over the suit land can certainly maintain a suit for permanent injunction restraining the other co-sharer from interfering in the possession of the plaintiff over the suit land. The learned Courts below failed to consider the Rapat Roznamcha No. 384, wherein, it has been mentioned that Khasra Girdawari entries were changed in the name of Parmesh Kumar son of Babu Lal Yadav from the name of Sarbati daughter of Surjan to the extent of her share. This document was prepared by the revenue officials in discharge of their official duty and the veracity thereof cannot be doubted.

I have heard learned counsel for the appellant and gone through the case file.

In this case, the plaintiff-appellant has relied upon the rapat roznamcha No.384, Ex.P5, to show that the plaintiff is in possession of the suit land to the extent of $\frac{1}{4}$ th share. It has been mentioned in the the rapat roznamcha that khasra girdawari entires were changed in the name of Parmesh Kumar son of Babu Lal from the name of Sarbati daughter of Surjan to the extent of her share i.e. 10 Kanals and 13 Marlas. On the contrary, the respondent-defendant has tendered in evidence judgment dated 03.11.2014 (Ex.DX), rendered by learned Civil Judge (Jr. Divn.), Mewat, in the suit for declaration and permanent injunction filed by Alka Sirivastav, respondent herein, against Parmesh, plaintiff herein. The suit of the respondent was decreed and it was held that rapat roznamcha No.384 dated 23.06.2009, with regard to $\frac{1}{4}$ th share in the suit land is wrong, illegal, null and void and the defendants therein were restrained to interfere in the suit land. Thus, once the rapat roznamcha, Ex.P6, on the basis of which the plaintiff has laid claim in the present suit, has been declared illegal, null and void, he cannot derive any benefit from the said document.

On consideration, this Court finds that the contentions have no merit as it only relates to the appreciation of evidence. No evidence has been shown to have been ignored from consideration,

nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

12.01.2016

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**(JITENDRA CHAUHAN)
JUDGE**