

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

R.S.A No. 5281 of 2015 (O&M)

Date of decision : 08.04.2016

Satnam Singh

..... Appellant

Versus

Ranjit Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.D.S.Virk, Advocate
for the appellant.

DARSHAN SINGH,J

CM No. 12578-C of 2015

There is delay of 25 days in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 25 days in filing the appeal is hereby condoned.

R.S.A No. 5281 of 2015(O&M)

The present appeal has been preferred by the appellant-defendant no.3 against the judgment and decree dated 19.05.2015 passed by the learned Additional District Judge, Fazilka, vide which the appeal filed by him against the judgment and decree dated 02.08.2013, passed by the learned Civil Judge (Jr. Division), Fazilka, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent no.1 Ranjit Singh has filed the suit for permanent injunction restraining the defendants from causing any forcible, illegal and unauthorized interference into the peaceful and continuous possession/enjoyment of the plaintiff over the *gair mumkin* (*Garha Khad*) measuring 03 Marla and further restraining them from raising any *Kacha* or *Pucca* construction over the said land or otherwise from tethering the cattle or placing roori/garbage in the said land situated in village Chack Pakhi.

4. As per averments in the plaint, plaintiff-respondent no.1 purchased the suit land from Dharam Singh, Daya Singh, Karam Singh and Swaran Kaur etc, who delivered him actual possession of the land sold by them in favour of the plaintiff comprised of Khasra no.222 (0-2). Nihal Kaur and Bachan Kaur had also sold their respective shares in Khasra No.223 (0-2) in favour of the plaintiff. In this way, he is in peaceful, continuous occupation of the land in dispute. The defendants had got no connection with the ownership or with possession over the suit land. But, they intend to disturb the possession of the plaintiff with an ulterior motive. Hence, the suit.

5. Appellant and his co-defendants/proforma respondents no.2 to 4 contested the suit on the grounds *inter alia* that vendor of the plaintiff, Dharam Singh etc were not in actual physical possession of the land in dispute. However, they admitted that Nihal Kaur was recorded as owner of Khasra No.223 (0-2) and Nazar Singh etc were recorded as

owner of Khasra no.222 (0-2). They have admitted the purchase of the suit land by plaintiff from Daya Singh and Dharam Singh etc. They further pleaded that plaintiff was not in possession of the land comprised of Khasra no.223(0-2). No proceeding regarding demarcating the land were got conducted by the Patwari Halka, specially in presence of the answering defendants. They further pleaded that they are in possession at the spot and they had constructed their *Kothas* thereon and are in actual physical possession over the land falling in Khasra No.224 (0-2). They have been using the *Kothas* for the last many years. They further pleaded that the site in dispute does not fall in Khasra No.222 or 223, rather it falls in Khasra No.224 (0-2), which is owned by them. With these pleas, they pleaded for dismissal of the suit.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled to permanent injunction as prayed for?OPP
2. Whether suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has no locus standi or cause of action to file the present suit?OPD
4. Whether the plaintiff has concealed material and patent facts from the Court, if so to what effect?OPD
5. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff-respondent no.1 vide impugned judgment and decree dated 02.08.2013.

8. Aggrieved with the aforesaid judgment and decree dated 02.08.2013, the appellant-defendant no.2 preferred the appeal which was also dismissed by the learned Additional District Judge, Fazilka, vide impugned judgment and decree dated 19.05.2015. Hence this Regular Second Appeal.

9. I have heard Mr. D.S.Virk, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that there is no documentary evidence to establish that the plaintiff-respondent no.1 is in possession of the suit property. He contended that in fact, the site in dispute is part of Khasra no.224, which is owned and possessed by the appellant. No demarcation has been got conducted by the plaintiff in order to show that the portion in dispute is part of Khasra no.222 and 223. Thus, he contended that the learned Courts below have wrongly decreed the suit filed by the plaintiff-respondent no.1.

11. I have duly considered the aforesaid contentions.

12. Plaintiff-respondent no.1 has filed the suit for seeking injunction restraining the appellant-defendant and his co-defendants from causing any forcible, illegal or unauthorized interference into his peaceful possession over the *Gair Mumkin (Garha Khad)* comprised of Khasra no.222 and 223 total measuring 03 Marlas, which he had purchased from Dharam Singh, Daya Singh, Karam Singh, Swaran Kaur etc, Nihal Kaur and Bachan Kaur. Plaintiff-respondent no.1 has also relied upon the affidavit dated 16.03.2010 executed by Daya Singh, wherein he has

categorically mentioned that his mother Nihal Kaur and sister Bachan Kaur have sold their respective shares in Khasra no.223 (0-2) in favour of the plaintiff. In order to prove this affidavit, he has examined PW-2 Lakhwinder Singh as well as PW-5 Hari Devi Bhusri, Notary Public. The affidavit Ex.PW5/A dated 16.03.2010, though cannot be considered to be a document of title, but the said affidavit can certainly be taken into consideration to show the possession of the plaintiff-Ranjit Singh over the land comprised of Khasra no.223 (0-2). So, there is no escape from the conclusion that the possession of the entire land comprised of Khasra no.223 (0-2) has been delivered to the plaintiff by its previous owners. Swaran Kaur, Sukhwinder Singh and Rani transferred their share to the extent of one Marla in favour of plaintiff-Ranjit Singh. The Mutation no.1319 was entered and sanctioned in favour of the plaintiff qua one Marla of the land comprised of Khasra no.222. Thus, from the evidence adduced by the plaintiff, copy of Jamabandies Ex.P-1, Ex.P-2 and affidavit EX.PW5/A, it is evident that plaintiff-Ranjit Singh is in possession of 3 Marlas of land comprised of Khasra Nos.222 and 223.

13. Appellant-Satnam Singh has appeared in the witness box as DW-1. In the cross-examination, he has categorically admitted that they have no concern with Khasra nos. 222 and 223. So, the appellant have impliedly admitted the possession of the plaintiff over the land comprised of Khasra nos.222 and 223. The appellant-defendant has taken the plea that plaintiff-Ranjit Singh has encroached upon the land of the defendants comprised of Khasra no.224 and the site in dispute is also part of Khasra no.224. But, the appellant has not been able to establish this plea raised

by the defendants. The appellant-defendants have examined DW-2 Gurcharan Singh, Patwari, who has placed on record the copy of the Rapat Rojnamcha dated 23.01.2009 Ex.D-3. But, in the cross-examination he admitted that at the time of demarcation, he was not on duty. But, Balbir Singh was posted as Patwari and Tek Singh was posted as Kanungo. DW-2 has simply produced the copy of the Rapat Rojnamcha no.501 dated 23.01.2009, wherein the proceedings regarding demarcation were recorded. He is not the person who had participated in the demarcation of the suit land. In the absence of the revenue officer, who has carried out the demarcation, the said demarcation report cannot be taken into consideration. Thus, the appellant has not been able to establish that plaintiff-Ranjit Singh has encroached upon any portion of Khasra No.224 owned by him and his co-defendants.

14. Thus, in view of the evidence adduced by plaintiff-respondent no.1 and the admission of DW-1 Satnam Singh-appellant in the cross-examination that they had no concern with Khasra no.222 and 223, it can safely be concluded that plaintiff-respondent no.1 is in possession of land measuring 03 Marlas comprised of Khasra no.222 and 223 and he is entitled to protect his possession over these Khasra numbers. Therefore, the learned trial Court has rightly granted the injunction in favour of the plaintiff-respondent no.1, which has been rightly affirmed by the learned First Appellate Court.

15. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below, which do not warrant any interference by this Court in the Regular Second Appeal.

16. Consequently, the present appeal having no merits is hereby

dismissed with no orders as to costs.

April 08, 2016
s.khan

(DARSHAN SINGH)
JUDGE