

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3635 of 2014 (O&M)
Date of Decision : 11.03.2016

Resham Singh

....Appellant

Versus

Gurbachan Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinod Khunger, Advocate
for the appellant.

Surinder Gupta, J.

Heard.

Plaintiff-Resham Singh (appellant) filed suit seeking the relief of permanent injunction to restrain defendant-Gurbachan Singh, who is his brother, from interfering in possession of plaintiff over suit land measuring 12 *kanals* 4 *marlas* comprised in Rectangle No. 7, *Killa* No. 13 *Min.* (4-4) out of 5 *kanals* 9 *marlas*, *Killa* No. 18 (8-0), situated in the area of village Kalu Wala, *Tehsil* and District Ferozepur.

Plaintiff based his claim on the entry in *khasra girdawari*, which was ordered to be corrected by the Assistant Collector IInd Grade, Ferozepur vide order dated 29.03.2010 from the crop of *Harhi* 2010.

Defendant contested claim of plaintiff with the plea that plaintiff and defendant are having two other brothers and Mohinder Singh, brother of parties, was recorded as in possession of 48 *kanals* 18 *marlas* of land belonging to Provincial Government which also include the suit land. Entries in *khasra*

girdawari were being recorded in the name of Mohinder Singh. Out of 48 *kanals* 18 *marlas* of land, he gave 36 *kanals* 12 *marlas* of land to plaintiff, defendant and third brother Sunder Singh and executed affidavit dated 04.02.2008. Thereafter, plaintiff, defendant and Sunder Singh partitioned the land measuring 36 *kanals* 12 *marlas* orally and in that partition suit land fell to the share of defendant and other land fell to the share of plaintiff.

Learned Additional Civil Judge (Senior Division), Ferozepur dismissed claim of plaintiff with the observation that in the revenue record Mohinder Singh is shown to be in possession of suit land and order dated 29.03.2010 had been stayed by Collector, Ferozepur. In the affidavit dated 04.02.2008 (Ex. D-1), produced on record by the defendant no specific *khasra* number was shown as having been given to plaintiff, defendant and Sunder Singh. The Court observed that even possession of Mohinder Singh is recorded as illegal in the revenue record qua the land which is owned by Provincial Government and plaintiff, in the absence of any evidence of possession in his favour, is not entitled to the relief of injunction.

Learned counsel for the appellant has argued that the witness examined by defendant, DW-2 Jiwan Singh had admitted possession of plaintiff over suit land and his admission is sufficient to prove that plaintiff is in possession of land in dispute and the Courts below have committed grave error while declining the relief of injunction.

Learned Ist Appellate Court has taken note of this argument and has rightly observed that it may not be

appropriate to pick up a line emerging in the statement of DW-2 Jiwan Singh and to conclude that plaintiff is in lawful possession of suit property. In the previous line in his cross-examination Jiwan Singh has stated that he is not aware of *khasra* number of suit land. In view of this, his statement has rightly been discarded by the Court below.

Plaintiff and defendant are the brothers and their case is that suit land and other land was in possession of their brother Mohinder Singh, who has transferred possession of same in favour of plaintiff and defendant. Mohinder Singh is not party to the suit and no cogent and convincing evidence proving possession of plaintiff over suit land was produced. Entry in *khasra girdawari*, which was corrected by revenue official vide order dated 29.03.2010, no more weighs in his favour as that order has since been set aside.

In the absence of any cogent and convincing evidence proving possession of plaintiff over suit land, both the Courts below have committed no error of law and fact while declining the relief of permanent injunction.

No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

March 11, 2016
jk

(SURINDER GUPTA)
JUDGE