

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. No. 14486-C of 2014 and
RSA No. 6083 of 2014 (O&M)

Date of decision: May 19, 2016

Baljeet and others

...APPELLANTS

Versus

Dharamshala Somwati Wali and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Virendra Rana, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division) Mewat dated 20.05.2014, whereby the suit of the appellants-plaintiffs for declaration with permanent injunction has been dismissed whereas the counter claim, as put forth by the respondents-defendants, has been decreed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, Mewat on 30.09.2014.

2. It is the contention of the learned counsel for the appellants that the respondents-defendants Dharamshala Somwati Wali through Somwati widow of Sh. Prithvi asserts herself to be a *dholidar* and since she is 80 years old with no issue and she is rendering no service as of now and, therefore, she cannot be declared as a *dholidar*. Assertion has also been

made that vide an order passed by the Sub-Divisional Magistrate, Nuh, an application moved by Smt. Somwati for declaring herself to be the owner of the property as she is a *dholidar*, has been dismissed. Although the counsel concedes that an appeal before the Commissioner, Gurgaon is still pending against the order of the Sub-Divisional Magistrate, Nuh but he contends that since she is not rendering any service, there is no question of her being in possession of the suit land and, therefore, the judgments and decree passed by the Courts below cannot sustain and deserve to be dismissed.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments.

4. The issue with regard to Smt. Somwati-respondent-defendant being a *dholidar* has not yet been finalized as the appeal is pending before the Commissioner, Gurgaon against the order of the Sub-Divisional Magistrate, Nuh. The question primarily relates to the factum as to whether the respondent-defendant is in possession of the suit land, which has been established on the basis of the revenue record, which has been produced, according to which, she is in possession of the suit land since the year 1963 onwards. The possession having been established on the basis of the revenue record, the issue with regard to ownership on the basis of her being a *dholidar* being a matter of consideration before the Commissioner, Gurgaon, the findings, as recorded by the Courts below, cannot be faulted with as the same are based upon proper appreciation of the pleadings brought on record.

5. The findings, as recorded by the Courts below being on due and proper consideration of the pleadings and the evidence brought on

record cannot be faulted with or can not be said to be, in any manner, illegal which would call for interference by this Court.

6. No other point has been raised or argued by the counsel for the appellants.

7. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

8. There is no substantial question of law in the present appeal, which requires consideration of this Court.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for grant of stay and, therefore, the same stands dismissed.

May 19, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE