

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2209 of 1990 (O&M)
Date of decision: 17.02.2017

Jaswant Singh and others

... Appellants

Vs.

Pritam Singh (deceased) through LRs

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Prateek Gupta, Advocate
for the appellant.

Mr. M.K. Singla, Advocate and
Mr. Dinesh Kumar, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J. (ORAL)

Plaintiffs are in regular second appeal against the impugned judgment and decree dated 16.10.1990 passed by the learned first appellate Court, whereby their first appeal was dismissed and the impugned judgment and decree dated 28.07.1987 of the learned trial Court, partly decreeing their suit for permanent injunction, were upheld.

Brief facts of the case, as recorded by learned trial Court in para 2 of its impugned judgment, are that previously Raj Kumar and others were the owners of the suit property. That the owners disposed it of in favour of the plaintiffs through registered sale deed No.1600 dated 20.06.1986 for a consideration of Rs.30,000/-. That the plaintiffs were put in possession at that

time by the vendors, since the vendors were in possession of the suit property. That defendant illegally threatened to interfere in possession of the plaintiffs which had given rise to the cause of action to institute the suit for permanent injunction against the defendant to the plaintiffs. The plaintiffs had prayed that defendants be perpetually restrained from interfering in any manner in possession of the plaintiffs in the agricultural land as fully depicted in head note of the plaint.

Defendant was put to notice. Defendant appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. After completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are in possession over the property in dispute and thus entitled to the injunction prayed for? OPP
2. Whether the plaintiffs have no locus-standi to file the suit? OPD
3. Whether the suit is not maintainable? OPD
4. Whether the suit is liable to be stayed under Section 10 CPC? OPD
5. Relief.

In order to substantiate their respective stand taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiffs had failed to prove their case in toto. Accordingly, the suit was partly decreed by the learned trial Court, vide its impugned judgment and decree dated 28.07.1987. Dissatisfied, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate

Court, vide its impugned judgment and decree dated 16.10.1990. Hence this second appeal at the hands of the plaintiffs.

Notice of motion was issued by this Court vide order dated 06.12.1990. Thereafter, the appeal was admitted for regular hearing vide order dated 16.05.1991. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

A bare combined reading of both the impugned judgments and decrees would show that the learned Courts below have considered each and every relevant aspect of the matter in minute details, before recording their cogent findings, which were finally made the basis for arriving at just conclusions. Plaintiffs-appellants failed to substantiate their pleaded case, for want of sufficient evidence. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing their respective impugned judgments and the same deserve to be upheld.

Before recording its own cogent findings, learned first appellate Court reconsidered and appreciated the factual as well as legal aspect of the matter, in the correct perspective. The relevant findings recorded by the learned first appellate Court in para 7 of its impugned judgment, which deserve to be noticed here, read as under: -

“Defendant Pritam Singh since dead, appearing as D.W.1 testified to the fact that it was he who had been in possession of the suit property right since the year 1970-71 and that it was he who had been cultivating the same adding that prior to him possession was that of his father. His statement received corroboration from the testimony of D.W. Bhagwan Singh in all material particulars.

Matter does not end here. Even copy of the khasra Girdawari Ex.P2 shows the possession of Dalip Singh (father of defendant Pritam Singh) as tenant during the year 1983-84 so far as this property is concerned and there is lease evident to show that he was ever dispossessed till the suit land along with other land was sold to the plaintiffs vide sale deed dated 20.6.1986. At the most, possession of the plaintiffs so far as said land is concerned, was shown for the first time on the length of report No.392 dated 20.3.1989 regarding correction of khasra girdawari as depicted from Ex.P2 itself but it does not tilt the balance even remotely, correction having been ordered during the pendency of civil litigation. I find support for the view taken from the authority in case Nabha Vs. Partap Singh alias Chuhria and another, 1986 P.L.J. 535 wherein it was held by Hon'ble Mr. Justice S.S. Sodhi as under: -

“It was during the pendency of the present suit that vendee Nanha applied for correction of these khasra girdawaris on April 28, 1975 which culminated in the order directing the said correction which was passed on July 28, 1976. It was on the basis of these correction of entries in the khasra girdawaris that the appellant now rests his case. No exception can, however, be taken to the manner in which the lower appellate Court dealt with this aspect of the case following the observation in Gurnam Singh Vs. Jagjit Singh, 1972 P.L.R. 211 to the effect that once the controversy has come to the Civil Court, it cannot be allowed to be

transferred for decision to the revenue authority. It is thus for the Civil Court independently to go into the pleas raised by the parties in regard to their possession. In such a situation, it was open to the Court having regard to the other material on record to prefer the entries in the khasra girdawari Ex.P6 and P7 to those as corrected after the order of the Assistant Collector. The Court preferred the former.”

No doubt, plaintiff Jaswant Singh appearing as PW1, Nazir Singh as PW2, Harminder Singh PW4, Mohinder Singh as PW5 spoke in favour of possession of the plaintiffs over the said two killa numbers also yet their statements have to be discarded out of necessity in view of the discussion made already particularly when Jaswant Singh happens to be one of the plaintiffs while Nazir Singh cannot otherwise be said to be an independent witness, there being litigation between him and the defendant as have come in his very cross-examination whereas Harmohinder Singh and Mohinder Singh cannot be said having stood the test of cross-examination in right earnest.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the learned Courts below and rightly so, it being a matter of record. In fact, cultivating possession of defendant Pritam Singh was duly established on record with the help of relevant revenue record. It was also duly proved at the hands of the defendant Pritam Singh that he was never dispossessed till filing of the suit. On the other hand, there was hardly any

sufficient evidence led by the plaintiffs to prove their possession over the suit land. In this view of the matter, it can be safely concluded that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Learned counsel for the appellants also could not point any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. No fault can be found with the concurrent findings recorded by both the learned Courts below. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, present regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

17.02.2017
vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No