

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.390 of 1991
Date of decision:24.4.2017**

Anil Kumar and others

...Appellants

Versus

Chandgi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Ashok Verma, Advocate for the appellants.
Mr.Sumit Sangwan, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Plaintiffs are in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby learned trial court vide its impugned judgment and decree dated 8.4.1989, dismissed the suit of the plaintiffs for permanent injunction and their first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 2.2.1991.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of the impugned judgment, are that plaintiffs-appellants Anil Kumar etc. alleged that they were owners in possession of land described in the head note as well as in para No.1 of the plaint. They prayed that defendants Chandgi and his son Sheo Ram be restrained from interfering in

their possession and be also restrained from taking forcible possession of the land in question. It was further averred by them that prior to 19.5.1984, Chandgi Ram had been coming as a tenant on the land in dispute, but he had not been paying batai in time, so an ejectment application was filed against which was rejected by Assistant Collector Ist Grade on 19.1.1982 and thereafter, they preferred an appeal in the court of the Collector, Bhiwani, who, vide order dated 14.5.1983, allowed the appeal, passed an ejectment order against Chandgi. In pursuance of the same plaintiff-appellants took possession of the land in question on 29.5.1984 vide Rapat Roznamcha No.344, but in spite of that, he had been continuously interrupting and interfering in their possession in spite of several requests.

Having been put to notice, defendants put appearance and filed their written statement. It was specifically denied by the defendants in their written statement that possession of the suit land was, as a matter of fact, never delivered to the plaintiffs by the revenue authorities and the alleged Rapat Roznamcha was got prepared by the plaintiffs in collusion with the revenue officials. The actual cultivating possession of the suit land remained with the defendants throughout. Plaintiffs filed their replication.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiffs are in possession of the suit land?

OPP.

2. Whether Rapat Roznamcha No.344, dated 29.5.1984 was altogether false as alleged?OPD.

3. Whether the plaintiffs are estopped from filing this suit by their own acts and conduct?OPD.
4. Whether the matter is subjudiced as alleged?OPD.
5. Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD.
6. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that plaintiffs have failed to prove their pleaded case, for want of sufficient and cogent evidence. On the other hand, defendants were found in actual cultivating possession of the suit land. Since it was a suit for permanent injunction and plaintiffs were not found in possession of the suit land, they were bound to be non-suited. Accordingly, the learned trial Court dismissed the suit, vide its impugned judgment and decree dated 8.4.1989.

Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate court, by passing the impugned judgment and decree dated 2.2.1991. Hence this regular second appeal, at the hands of the plaintiffs. The appeal was admitted for regular hearing, vide order dated 10.7.1991 passed by this Court. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

The only short issue to be considered and decided, at the hands

of this Court is; whether the plaintiffs-appellants were able to establish their cultivating possession on the suit land or not because it was a suit for permanent injunction. At the very outset, when learned counsel for the appellants was confronted to refer to any relevant material or evidence available on record to show that the plaintiff-appellants have established their cultivating possession on the suit land, he had no answer and rightly so, it being a matter of record.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that although, onus was on the plaintiffs-appellants to prove their pleaded case, particularly their cultivating possession on the suit land, by leading cogent and convincing evidence, yet they have miserably failed to do so. There was no sufficient evidence to prove their physical possession on the suit land. No doubt, the claim of the plaintiffs was based on the basis of Rapat Roznamcaha Ex.P1, but the said document alone was not found sufficient for the reason that the learned Commissioner, Hisar, who was higher revenue authority in hierarchy, had directed the parties to maintain status quo vide his order dated 4.8.1994, passed in the appeal preferred by the defendants-respondents.

It is also a matter of record that the learned Financial Commissioner, Haryana, vide his order dated 27.7.1988 Ex.D2, while issuing notice in the revision petition filed by the defendants-respondents, had stayed their dispossession from the suit land. Further, plaintiff-appellant Anil Kumar himself admitted before the learned trial Court, while

appearing as PW-1, that he never moved an application, claiming himself in actual cultivating possession, seeking vacation of stay order, which was operating in favour of the defendants-respondents. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It seems that plaintiffs-appellants were trying to take forcible possession from the defendants-respondents. No doubt, appellants were entitled to take possession from the defendants-respondents, however, it is equally true that possession could have been taken by the appellants, only in accordance with law and not forcibly. Learned counsel for the appellants also pointed out that ultimately Financial Commissioner, Revenue, Haryana, dismissed the revision petition filed by the defendants-respondents. If that is so, law will take its own course. It is also not pleaded or argued case on behalf of the appellants that they took possession from the defendants-respondents, during the pendency of the suit.

Once the plaintiffs were not in actual and cultivating possession over the suit land at the time of filing their suit for permanent injunction, as it has been established on the basis of evidence available on record before the learned courts below as well as before this Court, suit of the plaintiffs was bound to fail. That is what has been held by both the learned courts below. Under these facts and circumstances of the case, noticed hereinabove, it can be safely concluded that both the learned courts below have committed no error of law, while passing their respective

impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 8 to 10 of its impugned judgment, which deserve to be noticed here, read as under:-

“The main crucial question which required decision in the case in hand is whether the Rapat No.344 dated 29.5.1984 is genuine, truthful and can be believed. The answer is in the negative because to establish the sanctity of this rapat, only Anil Kumar appeared in the witness-box as PW-1 who is an interested party. Can say anything to save or watch his interest. He also examined Patwari Halqa who supported rapat, in question, because it was scribed by him and he is bound to support his deed, whether those deeds are correct or incorrect. To corroborate their testimony, neither Chowkidar who did beating of drum, was examined nor any lumbardar or panch was examined to establish that in fact, possession of the land in question was delivered to Anil Kumar. Even there is no document on the file that Chandgi or his son Sheo Ram were served through any notice by patwari or the Kanungo who went at the spot, delivered the possession. The rapat reads that Ram was present in the filed, but it is nowhere mentioned whether Sheo Ram was asked to sign the rapat in token of delivery of possession of the land in question to Anil Kumar etc. There is no mention that the Kanungo while delivering the possession of the suit land to Anil Kumar etc.

asked to Sheo Ram to sign or thumb-mark the report and he declined to do so. Another suspicious circumstances which creates doubt in the genuineness of the rapat is that possession of the land in question was never got delivered by ploughing of the filed. Only a word 'Kassi tappa' is mentioned which is not just a mode of delivering possession of agricultural land.

After getting recorded this fictitious rapat, Anil Kumar etc. managed to get recorded Khasra girdawari entries of the land in dispute in their favour and on the basis of the same, in collusion with the local police of police Station Tosham, they managed to get registered two cases against Sheo Ram vide F.I.R. No.95 of 1986 under Sections 323/325 I.P.C., and second F.I.R. No.155 dated 20.9.1984 against Sheo Ram son of Chandgi, Kartar son of Sheo Ram, Chandgi son of Tota Ram. In those cases, Chandgi with his son Sheo Ram and grand son Kartar Singh were tried and they were acquitted. The learned Ilaqa Magistrate held that Chandgi was never dis-possessed from the land in dispute. So question of Chandgi, his son Sheo Ram and his grand son Kartar criminally tre-passing in the land in dispute, does not arise. The learned criminal court categorically reached at a conclusion that Chandgi was never dis-possessed, he has been coming in cultivating possession of the suit land as tenant. It is not disputed that judgments of the criminal court have got no direct bearing on a civil suit, but it cannot be denied that these judgments are relevant, can be looked into as corroborative piece of evidence and not as a substantiate piece of evidence.

For the sake of argument if it is admitted that a paper transaction was done while recording the rapat, in question, regarding delivering of the possession because at that time, fields were laying vacant. But Chandgi never allowed Anil Kumar etc. to enter in the land in dispute and he never allowed

to cultivate the land in question to them. Possession still remained with him. It is not the case of Anil Kumar etc. that Chandgi has again trespassed on the land in dispute as a trespasser. When there is no such case of plaintiff-appellant against Chandgi as of a trespasser, in fact eventuality it has to be presumed that Chandgi has been coming in cultivating possession of the suit land as a tenant and matter is still sub-judice in the Court of Financial Commissioner (Revenue). Since Chandgi has been come un-disputedly in cultivating possession of the suit land as a tenant, so plaintiff-appellants in spite of the fact that they being owners can not get a relief of permanent injunction against Chandgi.”

During the course of arguments, learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

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

24.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No