

103.

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

RSA-3306-2012 (O&M)

Date of decision:20.02.2017

MANJIT KAUR

... Appellant

versus

GURDEV SINGH AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

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

HARI PAL VERMA, J.

CM-8803-C-2012

Prayer in the application filed under Section 5 of the Limitation Act is for condonation of delay of 66 days in filing the appeal.

For the reasons stated in the application, same is allowed and the delay of 66 days in filing the appeal is condoned.

RSA-3306-2012

The appellant (hereinafter plaintiff), namely, Manjit Kaur has filed the present Regular Second Appeal against the judgment and decree dated 31.01.2012 passed by learned Additional District Judge, Faridkot whereby her appeal against the judgment and decree dated 24.05.2011 passed by learned Civil Judge (Junior Division), Faridkot was dismissed.

Briefly stated, the plaintiff had filed a suit for permanent

injunction restraining the defendants No.1 and 2 (respondents No.1 and

2 herein) from interfering the peaceful possession of the plaintiff and further to restrain them from dispossessing the plaintiff from the land measuring 36 Kanals 18 Marlas bearing Khewat No.359, Khatoni No.830, Khasra No.588/20-18, 591/16.0, situated in the revenue estate of Village Deep Singh Wala. The plaintiff has claimed that the suit land is in the ownership of Deep Singh Wala Scheduled Caste Land Owners Society i.e. defendant No.3 (herein respondent No.3) and had been orally distributed amongst its members for the purpose of cultivation. Earlier the father-in-law of the plaintiff, namely, Mahla Singh was the member of said Society and was in possession of the suit land and after his death, husband of the plaintiff, namely, Jeet Singh became the member of said Society. Since Jeet Singh had expired, after his death, plaintiff is in exclusive, peaceful possession of the suit land. The khasra girdawari of the suit land as well as other land owned by defendant No.1 is recorded in the name of defendant No.3. It is alleged that respondents-defendants No.1 and 2 in connivance with each other started claiming that they have got transferred the suit land in their favour on the basis of some false and fabricated document and they further claimed that they would forcibly snatch the possession of the suit land from the plaintiff. On 25.07.2005, respondents-defendants No.1 and 2 with 8/9 unknown persons forcibly entered the suit land and started destroying the jantar crop with two tractors. It was further submitted that respondents-defendants No.1 and 2 have no right to interfere in the peaceful possession of the plaintiff over the suit

property.

On notice, respondents-defendants No.1 and 2 had filed written statement, taking preliminary objections that the suit is not maintainable as the plaintiff has concealed the true facts from the court and she is not in possession of the suit land as she has already sold the land to defendant No.1 and his wife Baljinder Kaur through agreement and defendants No.1 and 2 are in possession of the same on the basis of part payment. It is further pleaded that there is valid documentary evidence in the form of agreement and affidavit which has been produced on the file. The plaintiff had sold the disputed land to defendant No.1 and his wife and handed over its possession to them and they are now in cultivating possession of the suit land.

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

- “1. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Relief.”

The trial Court dismissed the suit as the plaintiff has failed to prove her possession over the suit land, whereas the defendants alleged to have purchased the suit land from Jagmail Singh vide agreement dated 22.04.2005 (Ex.D2), who, in turn, asserted to have purchased the suit land from the appellant-plaintiff vide agreement dated 22.05.2002 (Ex.D1). But both these documents are without any evidentiary value when it has been proved on record by documentary

evidence that the plaintiff is not in possession of the suit land. The khasra girdawari for crop 2007 to Harri 2008 (Ex.D7) relied upon by the defendants to prove their possession is without any basis. In order to prove her possession, the plaintiff has examined PW2-Darbara Singh, the President of the said Society. But as per the affidavit of Darbara Singh which is Ex.PW-2/A tendered by way of his examination-in-chief, it is revealed that he has not stated which part of the land, owned by the Society, is in the possession of the plaintiff. He has simply stated that earlier the father-in-law and the husband of the plaintiff were in possession of land measuring 6 ½ killas, but he has not mentioned specific khasra numbers of the land which was in the possession of Mahla Singh-the father-in law of the plaintiff as well as Jeet Singh-husband of the plaintiff. During cross-examination, he has demolished the case of the plaintiff by stating that he does not know the total number of co-sharers of the land owned by Scheduled Caste society and also does not know by whom the suit land is being cultivated. Thus, the trial Court held that the plaintiff is not in possession of the suit land.

Feeling aggrieved by the judgment and decree dated 24.05.2011 passed by the trial Court, the plaintiff has filed an appeal and even the defendant-respondent No.2, namely, Sat Pal Singh filed cross objection against the said appeal. The Lower Appellate Court has dismissed the appeal as well as the cross objection filed by defendant-respondent No.2 vide judgment and decree dated 31.01.2012, by

observing that the trial Court was not bound to render finding as to who is in possession over the suit property because it was the suit filed by the plaintiff which was to be decided on the basis of issues framed and the onus to prove of which was on the plaintiff. Since the plaintiff has failed to prove issue No.1 regarding possession over the suit property in her favour, the trial Court has decided this issue against the plaintiff and in favour of the defendants.

Still aggrieved against the aforesaid judgment and decree dated dated 31.01.2012 passed by the Lower Appellate Court, the appellant has filed the present appeal.

Learned counsel for the appellant has argued that there is overwhelming documentary as well as oral evidence on file led by the plaintiff that she has been in actual possession over the land in dispute since long and that earlier her father-in-law, namely, Mahla Singh was in possession of suit land and after his death, her husband, namely, Jeet Singh came in possession of suit land. Further, after the death of her husband, the appellant-plaintiff has been in possession of the suit land. He further states that the judgments/decrees passed by the courts below are based merely on surmises and conjectures, ignoring the very cogent and consistent evidence led by the appellant-plaintiff to prove that she has been in possession of the suit land. Further, the courts below have wrongly relied upon the documentary evidence produced by the respondents, whereas the appellant-plaintiff has specifically submitted in her plaint that the khasra girdawaris of the suit land as well as other

land owned by defendant No.1 is recorded in the name of respondent-defendant No.3. Therefore, the findings given with respect to khasra girdawaris is not tenable in the eyes of law.

I have heard learned counsel for the appellant.

There is a concurrent finding on fact by both the courts below that the appellant-plaintiff was not found in possession of the suit land. The plaintiff had filed a suit for permanent injunction claiming herself to be in possession of the suit land as member of Scheduled Caste society and in support of her evidence, she has examined PW2-Darbara Singh. However, the said witness has simply stated that the father-in-law and the husband of the plaintiff were in possession of land, but he has not mentioned specific khasra numbers of the land which were in their possession.

Since the appellant-plaintiff has failed to prove possession over the suit land, both the courts below have rightly dismissed the suit.

Thus, no substantial question of law arises in the present regular second appeal.

In view of concurrent finding on facts by the courts below, this Court does not find any cause for interference in the present regular second appeal and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

20.02.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No