

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

RSA No.1981 of 2013 (O & M)
Date of decision :21.09.2017

Jagir Singh and others

...Appellants

Versus

Harbans Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Padam Jain, Advocate
for the appellants.

ANIL KSHETARPAL, J. (Oral)

CM No.11517-C-2017

This is an application for permission to lead additional evidence to produce jamabandi for the year 2011-12 and Khasra Girdawari.

In my considered opinion, the application filed by the appellant is without any substance because of two reasons:-

(i) Copy of jamabandi only carries a presumption of truth. In the present case defendants have executed documents, by which the possessory rights were sold/transferred in favour of the plaintiff.

(ii) these documents are part of the public record and were in the knowledge of the defendants-appellants.

For the aforesaid reasons, the application is dismissed.

Main Case

Defendants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for permanent injunction restraining the

defendants from taking forcible possession or interfering in any manner in

the possession of the plaintiff with respect to land measuring 10 kanals. Plaintiff pleaded that the land is owned by the Provincial Government. The plaintiff further pleaded that the suit land was earlier in possession of defendant No.4-Jasbir Kaur, who alienated her possessory rights vide agreement dated 20.11.2002 and put the plaintiff in possession. Plaintiff further stated that Jasbir Kaur also executed an affidavit on the same date i.e. 20.11.2002 for change of entries of possession in the revenue record. However, thereafter defendants want to take forcible possession.

It may be noticed that defendants before the trial Court were husband of Jasbir Kaur, two sons of Jasbir Kaur and Jasbir Kaur herself. Defendant No.5 was one Mohinder Singh. Defendants claimed that no agreement has been executed. Agreement and affidavit are result of fraud and defendants continue in the possession of the land in dispute. It was further pleaded that defendant No.1 used to sell his crops through Commission Agent run by Sadhu Singh, who is brother of the plaintiff and Sadhu Singh obtained signatures on the blank papers, which might have been handed over to the plaintiff and the aforesaid agreement and the affidavit have been forged thereon.

After framing of the issues and allowing the parties to lead evidence, learned trial Court returned a finding of fact that the plaintiff is in possession of the property pursuant to the agreement dated 20.11.2002, which is further acknowledged in the affidavit dated 20.11.2002. The Court further found that the defendants had taken a plea of fraud but they failed to produce any evidence in support thereof.

also after re-appreciating the evidence available on the file, confirmed the findings of fact arrived at by the trial Court.

Learned counsel for the appellant has submitted that in this case, the State was necessary party because State Government was admittedly an owner. He has further submitted that the agreement dated 20.11.2002 is not admissible in evidence. He has further submitted that PW-3 has admitted the possession of the defendants.

First submission of learned counsel is that the State Government was necessary party, is just to be noticed and rejected. The defendant did not request the trial Court to frame issue on non-joinder of necessary parties. In any case, the suit is only for permanent injunction. Parties are fighting for possessory rights. The ownership is not in dispute in the present case.

Second submission of learned counsel is that the agreement is unregistered and, therefore, it is not admissible in evidence. No doubt, the agreement is unregistered. However, in the present case, the Courts are not adjudicating upon the rights of the parties. The present case is only for permanent injunction and the question which arises for determination is which party is in possession. At least the defendants are estopped from claiming to be in possession in view of the aforesaid two documents.

Next argument of learned counsel is that PW-3 has admitted the possession of the defendants. Learned counsel is trying to read one line in isolation from the entire statement, which is not permissible in law.

Statement of the witnesses have to be examined in entirety and not a stray

For the reasons recorded above and also for the reasons recorded by the Courts below, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, the appeal is dismissed.

21.09.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No