

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

**RSA No.1778 of 2017 (O&M)
Date of decision: 30.03.2017**

Nazeer and others

... Appellants

Vs.

Aamin and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Surinder Singh Joshi, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendants are in regular second appeal against the impugned judgments and decrees passed by the learned Courts below, whereby first appeal of the defendants was dismissed by the learned District Judge vide impugned judgment and decree dated 12.11.2016 and the impugned judgment and decree dated 04.03.2016 of the learned trial Court, whereby suit for permanent injunction filed by the plaintiffs-respondents was decreed, were upheld.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of its impugned judgment, are that the plaintiffs filed the suit seeking a decree of permanent injunction restraining the defendants from dispossessing the plaintiffs from the suit land and also from interfering in peaceful possession of the plaintiffs over the suit land mentioned in para No.1

of the plaint. The plaintiffs and other members of their families filed a Petition No.199/S.D.O.(C)/2011, decided on 04.07.2013, in the Court of learned Collector, Ferozepur Jhirka, under The Haryana Dholidar, Bhumidar, Bhondedar and Mukarrardar Act, 2010, in which plaintiffs and other claimants were declared as owners of the suit land. By the dint of their physical force, the defendants were adamant to interfere in peaceful possession of the plaintiffs over the suit land forcibly and illegally. Plaintiffs being owners in possession of the suit land, had every right to restrain the defendants from their illegal and wrongful activities.

Having been served in the suit, defendants No.1, 4, 5, 8, 12, 17 and 21 put appearance and filed their contesting written statement, raising more than one preliminary objections. However, defendants No.2, 3, 7, 9 to 11, 13 to 16 and 18 to 20 did not appear and they were proceeded against ex-parte. No replication was filed by the plaintiffs. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to a decree for permanent injunction, on the ground, as prayed for? OPP.
2. Whether the suit is not maintainable? OPD.
3. Whether the plaintiffs have no locus standi to file the present suit? OPD.
4. Whether the present suit is bad for mis-joinder of the parties? OPD.
5. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have duly proved their case, by leading cogent and convincing evidence. Accordingly, their suit for permanent injunction was decreed, vide impugned judgment and decree dated 04.03.2016. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by learned first appellate Court, vide its impugned judgment and decree dated 12.11.2016. Hence this regular second appeal at the hands of the defendants.

Heard learned counsel for the appellants.

It is a matter of record and not in dispute that the entire case of the parties was based on an order dated 04.07.2013 passed by learned Collector, Ferozepur Jhirka under the relevant provisions of law contained in Haryana Dholidar, Bhumidar, Bhondedar and Mukarrardar Act, 2010. This order was passed by the competent authority in favour of the plaintiffs. It is also not in dispute that on the basis of abovesaid order dated 04.07.2013, mutation No.5061 had been sanctioned in favour of the plaintiffs.

The case set up by the plaintiffs for permanent injunction was based on the abovesaid order dated 04.07.2013 and mutation was sanctioned on the basis thereof. It has also gone uncontroverted before this Court that the order dated 04.07.2013 has not been set aside by any higher authority. When confronted with the abovesaid factual as well as legal aspect of the matter, learned counsel for the appellants had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

The abovesaid view taken by this Court also finds support from two judgments of the Hon'ble Supreme Court in **Mithu Singh Vs. Kishan Singh, 1988 (4) JT 202** and **Gram Panchayat, Roorki Vs. Jt. Development Commnr. (IRD), Punjab and others, 2004 (12) SCC 533**.

Before arriving at its judicious conclusion, the learned first appellate Court re-examined, considered and appreciated true facts of the case as well as evidence brought on record, in correct perspective. The cogent findings recorded by learned District Judge in paras 14 to 17 of his impugned judgment, which deserve to be noticed here, read as under: -

“Learned counsel for the respondents argued that even if it was assumed for a while that there was something wrong in the order of the learned Collector dated 4.7.2013, it was to be challenged by the appellants before the appropriate Revenue Authority and the learned trial Court was not competent to adjudicate upon the matter. This Court is in agreement with the contention of learned counsel for the respondents, in this regard, as an order has to be challenged in the appropriate forum.

It was argued by learned counsel for the respondents that for the purpose of suit for permanent injunction, learned trial Court was to look into the aspect of the possession of the parties over the suit land and respondents being in possession of the suit land, the relief of permanent injunction was granted and while deciding a suit for injunction only the aspect of possession was material. In the facts and circumstances of this case, this Court is in agreement with the contention of learned counsel for the respondents.

There was no dispute at Bar that under the Bhonedari Act, Revenue Court was competent to adjudicate the question of declaration with regard to the Bhonedar becoming the owner of the land.

Documents Ex.P1 to Ex.P3 proved the possession of the plaintiffs upon the suit land and the defendants have not placed on record any document or evidence which could show that defendants are in possession of the suit land. The revenue entries in the name of plaintiffs have not been challenged by the defendants before any Court of law till date and in the absence of that, same are presumed to be correct. Moreover, on the basis of revenue entries, plaintiffs have already been declared owners in possession of the suit land, so, question of possession of the plaintiffs upon the suit land, does not arise.”

A bare combined reading of both the impugned judgments would make it crystal clear that the learned Courts below recorded their concurrent findings of fact, which have been found based on sound reasons. During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the concurrent findings recorded by both the learned Courts below. Further, learned counsel for the appellants could not refer to 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. 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, instant regular second appeal stands dismissed, however, with no order as to costs.

**[RAMESHWAR SINGH MALIK]
JUDGE**

30.03.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No