

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARHSr. No. 125RSA-4359-2017 (O&M)Decided on : 12.09.2017

Harbans Singh and another

..... Appellants

VERSUS

Hari Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBALPresent: Mr.Ankur Lal, Advocate,for the appellants.

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DEEPAK SIBAL, J. (ORAL)

The appellants, who were the plaintiffs before the Trial Court, filed a suit seeking therein a declaration to the effect that the order of partition dated 27.07.2009 and the *rojnamcha* No.177 dated 31.01.2011 as also the mutation entered on the basis of the above partition be declared null and void and not binding on the rights of the appellants. A decree for permanent injunction restraining the respondents from interfering in the possession of the appellants was also sought.

So far as the relief sought by the appellants with regard to declaration of partition proceedings including the *rojnamcha* and the *sanad takseem* to be declared null and void was concerned, the Trial Court refused to grant the same after coming to a definite conclusion that such prayer could not be granted on the asking of the appellants as they were not owners or co-sharers in the suit land and that the file of the partition proceedings, its judgment or the revenue record in that regard had not even been produced. The relief of injunction which the appellants claimed on the basis of their alleged settled possession for the last over fifty years was also denied for the reason that the appellants were not found to be tenants over the suit land; their settled possession over the suit land was not established as only one *jamabandi* for the year 2009-10 was produced showing the appellants to be in possession of the suit property

without explaining as to how they entered into its possession and that no recent *khasra girdawaris* were produced. Thus, the pleading of the appellants that they were in settled possession of the suit property for about fifty years was found to be not matching with the revenue record.

The appellants' appeal against the above dismissal of their suit by the Trial Court met the same fate as their suit, giving them a cause to knock the doors of this Court through the present regular second appeal.

Learned counsel for the appellants submits that he presses the present appeal qua only the relief of injunction and gives up the claim with regard to the declaration sought to challenge the partition proceedings. It is further submitted that once the appellants have produced the *jamabandi* for the year 2009-10 showing their possession therein and that the respondents have admitted that possession of the suit property prior to the year 2009-10 was with one Pala Singh who was the appellants' uncle as also the appellants' possession at the time of filing of the suit, the Trial Court as also the Appellate Court erred in not granting the relief of injunction to the appellants.

The above submissions though attractive at first blush do not stand deeper scrutiny and thus deserve to be rejected.

For seeking an injunction against a true owner what the appellants were required to prove was their settled or effective possession. In the case in hand neither settled nor effective possession is found to have been proved by the appellants. Though it was pleaded by the appellants that they were in possession of the suit property over the last about fifty years the falsity in their case came to the fore when they could produce only one *jamabandi* for the year 2009-10 showing a stray entry therein with regard to their possession over the suit property which entry further did not show as to how and under what authority of law were the appellants shown to be in possession of the suit property. On the other hand,

as per the revenue record, prior to the year 2009-10 the suit property was in

possession of one Pala Singh. As to what relation the appellants had with Pala Singh was neither pleaded nor proved by them. The so called admission by respondent-Harbhajan Singh with regard to the relationship between Pala Singh and the appellants cannot be termed to be an admission. To bind a party to one's admission, the same has to be definite and specific. Neither of the two factors are found in the statement of Harbhajan Singh as he stated that he knew Pala Singh and while answering to a question posed by learned counsel appearing on behalf of the appellants he simply stated that Pala Singh may have been the appellants' father's younger brother or may be his elder brother. The above statement being vague cannot be held to be an admission on the part of the respondents admitting to the relationship of Pala Singh and the appellants. In the absence of the above admission with regard to the relationship between Pala Singh and the appellants it was for the appellants to prove their relationship viz-a-viz Pala Singh but what to talk of proving such relationship they had not even pleaded the same. On the other hand, what they had pleaded was that it was they who were in possession of the suit property for about fifty years and it is only when such revenue record came to the fore showing Pala Singh to be in possession of the suit property prior to the year 2009-10 that the appellants then sought to show their relationship with Pala Singh.

In view of the above, no question of law much less any substantial question of law arises in the present appeal warranting interference in the concurrent findings of fact returned by both the Trial Court as also the Appellate Court.

Dismissed.

12.09.2017
shamsher

Whether speaking/reasoned
Whether reportable

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[DEEPAK SIBAL]
JUDGE

Yes / No
Yes / No