

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1633 of 1990 (O/M)
Date of decision : 7.5.2018

Manjit Kaur and others

..... Appellants

Versus

Basant Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. M.L. Sarin, Senior Advocate, with,
Mr. Amaninder Preet Singh, Advocate,
for appellants.

None for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

Impugned in present regular second appeal is order dated 8.5.1990, passed by learned Additional District Judge, Faridkot, affirming judgment and decree dated 27.7.1987, passed by learned Additional Senior Sub Judge, Muktsar, whereby suit of plaintiffs-respondents for permanent injunction was decreed and defendants-appellants were restrained from interfering or taking forcible possession of suit land without due course of law.

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As per the amended plaint, plaintiffs claim that Ajaib Singh husband of plaintiff No. 1 and father of plaintiffs No. 2 and 3 had purchased suit land from Smt. Chhoto alias Manjit Kaur, vide sale deed dated 19.4.1972. Ajaib Singh was in possession of suit land as tenant prior to its purchase. Ajaib Singh died on 20.9.1979 and land was mutated in the name of LRs of Ajaib Singh, vide mutation No. 1014, dated 20.9.1979 and since then they are in cultivating possession of the said land. Defendants have no concern with the land and want to dispossess them.

In the unamended written statement, defendants took plea that Ajaib Singh was the near relation of Manjit Kaur. He was never in possession of suit land. Sale deed dated 19.4.1972 was admitted but it is stated that possession remained with Manjit Kaur. It was further stated that Manjit Kaur alias Chhoto, vide agreement to sell dated 12.3.1979 agreed to purchase suit land from plaintiff-respondent Basant Kaur for Rs. 99,000/-. Rs. 80,000/- were paid as earnest money and she received the suit land in part performance of agreement. Since then Manjit Kaur is in possession of suit land.

Manjit Kaur alias Chhoto, who was added as party later on, in separate written statement, took plea that she had agreed to purchase suit land, vide agreement dated 12.3.1979 for Rs. 99,000/-, Rs. 80,000/- were paid as earnest money and in part performance, possession was given to defendant Manjit Kaur. It was further stated that Ajaib Singh was near relation of defendant No. 7 Manjit Kaur. The land was shown sold to Ajaib Singh, vide sale deed dated 19.4.1972 on account of implementation of Land Reforms Act. Manjit Kaur was in possession of land and thereafter, she remained in possession thereof. Plaintiffs never resided in village

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Chhibranwali. Husband of Manjit Kaur died about 13-14 years back and, therefore, she could not check the jamabandi and khasra girdawari.

Trial Court framed the following issues :-

1. Whether the plaintiffs are owners in possession of the land in dispute ? OPP
2. Whether the plaintiffs agree entitled to the injunction prayed for ? OPP
3. Relief.

The learned Additional Senior Sub Judge, Muktsar, found that plaintiffs were in possession of land. Accordingly, suit was decreed. The findings were upheld in appeal.

Before this Court, a great stress was laid on the fact that sale deed was executed in favour of Ajaib Singh on 19.4.1972 on account of implementation of Land Reforms Act to save the land. Infact, Ajaib Singh was close in relation of Manjit Kaur (cousin) and never came in possession of suit land. He never resided in village Chhibranwali. Further stress has been laid on the fact that agreement was executed between plaintiff Basant Kaur and defendant Manjit Kaur on 12.3.1979 for Rs. 99,000/-. Rs. 80,000/- were paid as earnest money and in the part performance, possession was delivered to defendants. Now perusal of the jamabandi for the year 1981-82 (Ex.P1) shows that on account of sale, suit land was mutated in the name of plaintiffs. The entry in this regard was made in cultivation column meaning thereby that possession was also changed in favour of plaintiffs. Similarly, entries are found in copies of khasra girdawari for the year 1982-83 and 1984-85. Therefore, from revenue record it is clear that possession was delivered to plaintiffs and they remained in possession of suit land. The

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entry regarding nehri girdawari cannot rebut revenue record. Copy of sale deed dated 19.4.1972 in favour of Ajaib Singh shows that there is a recital that possession is already with purchaser, namely, Ajaib Singh which means that even before the execution of sale deed, Ajaib Singh was in possession of suit land.

The learned senior counsel for appellants vehemently argued that khasra girdawari was changed by competent authority and order has been upheld in appeal. Therefore, it will prove possession of defendants.

I am of the view that present suit was filed on 1.7.1985 and was decided on 27.7.1987 by trial Court. AC Second Grade, Muktsar, passed the order on 2.12.1985 i.e. during pendency of suit and Collector, Muktsar, passed the order on 15.12.1986 which is also during pendency of suit. Once dispute is pending in Civil Court, it is the Civil Court which is to decide who is in possession. Therefore, orders of AC Second Grade, Muktsar, and Collector, Muktsar, were rightly ignored by Courts below. It is defendants who have to prove as to how they came into possession of suit land. It is to be noted that defendants claim one agreement of sale dated 12.3.1979. However, till date no suit for specific performance has been filed. Therefore, said agreement has become time barred.

The learned senior counsel for appellants has further argued that plaintiff Basant Kaur and her husband Ajaib Singh never resided in village Chhibranwali and that her husband was working in Air Force and was posted in Bathinda.

I am of the view that even if one is in service, he is deemed to be in constructive possession of land owned by him. Basant Kaur has specifically asserted that her husband was earlier recorded as tenant. They

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are enrolled as voters in village Chhibraanwali and her husband has been casting vote at village Chhibranwali. She also disclosed the name of firm where their crop was being sold. It being so, it cannot be said that plaintiffs and before them Ajaib Singh was never came in possession of suit land. Findings of facts have been correctly recorded by both Courts below. Therefore, I do not find any illegality or infirmity in the judgments of two Courts below. Consequently, regular second appeal is dismissed with costs.

(KULDIP SINGH)
JUDGE

7.5.2018
sjks

Whether speaking / reasoned	:	Yes / No
Whether Reportable	:	Yes / No