

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

**RSA No.1218 of 1989 (O&M)
Date of Decision: May 24, 2018**

Sheo Raj and others

...Appellants

Versus

Ram Pal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Umesh Aggarwal, Advocate
for the appellants.

Mr. Ajay Ghangas, Advocate
for the respondents.

FATEH DEEP SINGH, J.

This regular second appeal has come about after a suit for permanent injunction etc. filed by Ram Pal and others, plaintiffs, now respondents against Sheo Raj and others, defendants, now appellants was decreed through judgment dated 17.12.1987 and which findings were upheld by the Court of learned Additional District Judge-III, Rohtak through impugned judgment dated 03.02.1989.

Upon hearing learned counsel for the parties and perusing the records of the case.

The case of the plaintiffs was that they are owners in possession of agricultural land bearing khewat No.209, Khata No.246, Rect. No.129, killas No.1(4-9), 2(4-17), 8(8-0), 10(6-16) total measuring 24 kanals and 2 marlas situated in revenue estate of village, Lohari. Alleging

that the defendants Shoe Raj and others were illegally and forcibly trying to interfere in their right, interest and title over the property and are making efforts to dispossess the plaintiffs from this property. The stand of the defendants is that they are co-sharers to the extent of 1/3rd share over the suit property and they are owner in possession to the extent of 1/3rd share over the suit land and that one Mange Singh (also referred as Magga Singh) is also owner in possession to the extent of 1/3rd share over the suit property. It is alleged that before consolidation forefathers of the defendants No.1 to 5 as well as plaintiffs and Mange Singh were owners in possession of the suit land in the years 1960-61 after which the suit land along with other lands were allotted to Harnath and Ganpat to which Gopi Singh, Manga Singh and Ram Pal filed objections before the Consolidation Officer and their objections were allowed vide order dated 9.8.1961 by the Consolidation Officer. Thereafter, it was mutually agreed between them to allot *quarrah* to anyone of them and, thereafter, partitioned the land, and, thereafter claimed right over the suit property and claimed that oral partition has been brought about by appellants and, thus, claimed that they were in actual possession of their share of the property. On the basis of pleadings of the parties the trial Court framed the following issues:-

1. Whether plaintiffs are owners and in possession of the suit land? OPP
2. Whether the
3. Whether plaintiffs have no locus standi to file the present suit? OPD
4. Whether plaintiffs are estopped from filing this suit by their acts and conduct, as alleged? OPD
5. Whether suit is bad for non-joinder of necessary parties?OPD
6. Whether defendants are entitled to special cost under Section 35-A of the CPC? OPD

7. Relief.

Plaintiffs examined one of the plaintiff Ram Pal as PW1, Kabul Singh as PW2 and Desrath as PW3, whereas, Partap Singh, Patwari appeared as DW1, defendant Sheo Raj as DW2, Khajan Singh as DW3 and Suraj Bhan as DW4. Consequent thereupon, the impugned findings were recorded and that is how the parties are before this Court in this appeal.

Appreciating the submissions of the two sides, learned counsel for the appellants as well as respondents readily accept that it is simplicitor suit for permanent injunction and seeking support from 2008(2) RCR (Civil) 879 Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and others this Court holds the view that where a plaintiff is in lawful or peaceful possession of his property and the possession is sought to be interfered or threatened by the defendant, a simplicitor suit for injunction will lie as the party has right to protect his possession against any person who does not prove a better title and further more in a suit for permanent injunction the plaintiff has to establish three essentials of prima facie case, irreparable loss, and balance of convenience. Besides, the plaintiff has to establish that as on the date of the suit he was in lawful possession of the suit property and it was the defendant who tried to interfere in the lawful possession. It is there in the revenue records relied upon by the plaintiffs consisting of jamabandi Ex.P1 where in the column of title Ram Pal son of Jwala, Anand Kumari along with Yoginder Singh, Ravinder Singh, Narinder Singh, Mohinder @ Obinder and Raj Kumar sons of Ram Pal are shown to be owners in possession of property in dispute. Learned counsel for the

appellants with all fairness conceded at the bar that there is no document proved by them or documentary evidence in their support to establish it so or any fact to bring about their case that an oral settlement had taken place and they were handed over the possession as claimed by them in their written statement. It has been categorically submitted by plaintiff Ram Pal as PW1 that they are owner in possession of three killas of suit property, where they have constructed their houses and have shisham trees, eucalyptus trees and kikkar trees on this land and which is duly supported by their remaining witnesses PW2 Kabul Singh and PW3 Desrath. Though, on behalf of defendants, DW2 admits the *inter se* relationship between PW3 and respondent side but could not prove on records and which is duly conceded to at bar by the learned counsel for the appellants that there is no such proof that partition before the Consolidation Officer was made and, thereafter, settlement had arrived at between the parties. Mere oral testimony cannot outweigh the documentary proof of the plaintiffs. Even jamabandies Ex.P2 for the years 1965-66; Ex.P3 for the years 1970-71 bring about what has reflected in Ex.P1 together with the khasra girdawari Ex.P4 and Ex.P5 leaves no scope to doubt as to the legal possession vests with the plaintiffs and they are in legal continuous established possession as truthful owner. Mere entry in roznamcha as sought to be projected by learned counsel for the appellants regarding exchange of land cannot outweigh such a documentary evidence led by the plaintiffs. Learned trial Court while adjudicating on the issues has rightly appreciated the documentary evidence as well as oral testimonies of the witnesses of the plaintiffs and has rightly come to a justifiable conclusion on issue No.1 and which has been correctly

upheld through the impugned findings by the first Appellate Court. No other point was raised by any of the sides.

In the light of what has been detailed and discussed above, there appears to be no illegality or perversity in the impugned findings which need to be upheld. The suit of the plaintiffs had been rightly decreed. Thus, the present appeal being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 24, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No