

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

RSA No.1591 of 1999 (O&M)
Date of decision: 04.04.2018

Mangal Singh (deceased) through LRs ... Appellant

versus

Surta (deceased) through LRs ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellant.

Mr. Saurabh Dalal, Advocate
for respondents No.4 to 21.

Amit Rawal, J(Oral)

The appellant-plaintiff is in appeal against the concurrent finding of the fact that suit claiming permanent injunction against the defendant from forcible dispossession and interference qua the land comprising in Khasra No.1255 vide judgment and decree dated 23.05.1996 has been dismissed by the trial Court and vide judgment dated 04.01.1999 upheld by the lower Appellate Court.

The facts as emanated from the pleadings of the parties are that appellant-plaintiff instituted the suit aforementioned on the ground that his fore-father namely Mehar Singh was in possession of the land. After settlement, which had taken place in the year 1909-1910, the aforesaid khasra number became part of abadi deh but remained in possession of his fore-father. The appellant-plaintiff had constructed a gitwar, khararis, khors and used the plot for placing bitoras and tethering cattle. The respondent-

defendant being powerful, wanted to forcibly dispossess the appellant which gave a cause of action for filing the aforementioned suit.

The respondent-defendant contested the suit by taking all usual and customary preliminary objections but on merit it was averred that the plaintiff had not given a clear picture with regard to the plot number as the boundary of the plot given in the plaint was that of plot No.285 and not 1255. The plot No.285 was given to the defendant during partition proceedings which had been in possession since long. The plaintiff was not in possession nor raised any construction. Therefore, there was no question of extending any threat of dispossession or forcible interference.

Since the parties were at variance, the trial Court framed the following issues:

1. Whether the plaintiff is owner in possession of the land in dispute as alleged in the plaint? OPP
2. Whether the suit is not maintainable in the present form?
OPD
3. Whether the present suit is hit by the principle of res judicata? OPD
4. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD
5. Whether the suit is liable to be dismissed with special costs?
OPD
6. Relief.

Both the parties led oral and documentary evidence in support of their case. The plaintiff examined PW-1 Manohar Lal, record keeper,

who produced the summoned file, PW-2 Atma Ram, who proved the copy of the report of local commissioner, PW-3 Mangal Singh and PW-4 Ram Pal, who stated that the father of the plaintiff – Hoshiara son of Hari Ram was in possession of the suit property in dispute.

On the other hand, defendant examined DW-1 Balwan Singh, who stated that the defendant was in continuous possession for the last 40 years. DW-2 Ran Singh, attorney of his father, stated that the disputed plot was bearing No.285 and they were in possession. The appellant-plaintiff brought on record documents Ex.P1 to P10 whereas defendant had exhibited documents Ex.D1 to D7. The trial Court on the basis of oral and documentary evidence dismissed the suit and the appeal preferred against the same also met with the same fate.

Mr. Amit Jain, learned counsel appearing for the appellant submitted that both the Courts below have committed illegality and perversity in not granting injunction qua possession, as the plaintiff on the basis of documentary evidence, as referred above, had been able to establish the long and settled possession. A person, who is not even the owner of the property can protect the possession or dispossession, if any, but can be dispossessed only through process of law. The Courts below misread and misinterpreted the documents Ex.PW-3/B and PW-3/C and the report of the local Commissioner Ex.PW-2/A, which clearly showed that the plot in dispute was the part of khasra No.1255. Mehar Singh had also been proved to be predecessor-in-interest of the appellant before the Courts below, thus, urged that the judgments and decree passed by the Courts below be set aside.

Per contra, Mr. Saurabh Dalal, learned counsel for the respondents No.4 to 21 submitted that both the Courts below have not erred in law but by relying upon Ex.D-1 and D-2 findings and copy of civil suit No.735 of 1982, which established that the plaintiff was never in possession but defendant-Surta (since deceased) represented through legal heirs, was in possession. The concurrent findings of fact and law cannot be disturbed unless and until there is gross illegality or perversity. The possession of the suit property throughout had been with the defendants. There was no ad interim injunction in favour of the plaintiff by the Courts below and much less by this Court also and urged for dismissal of the present appeal.

I have heard the learned counsel for the parties, appraised the paper book and record of the Courts below and of the view that there is no force and merit in the submissions by Mr. Amit Jain, for, Ex. D-3 showed the ownership of Surta on plot No.285 and Ex.D-4 copy of the order passed by District Judge whereby the appeal filed by Ram Kishan against the judgment and decree of the trial Court as per the aforementioned suit and the concurrent finding, Mehar Singh could not succeed in the proceedings seeking injunction. It is on that premise that the Courts below did not come to the rescue of the appellant-plaintiff for the purpose of granting injunction.

In my view, the plaintiff had miserably failed to discharge onus with regard to the possession of khasra No.1255 in order to bring the case within the expression of long and settled possession for the purpose of granting injunction. The old revenue record was of no help to the plaintiff, for, no documentary evidence prior to the filing of the suit had been placed

on record to establish the long and settled possession. I am afraid that the arguments of Mr. Jain are not tenable in order to convince me to form different opinion from the one arrived at by the Courts below. I do not find any merit in the case or involvement of substantial questions of law.

Accordingly, the present appeal is dismissed.

04.04.2018
sonia

(AMIT RAWAL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No