

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1408 of 2016(O&M)

Date of Decision: 17.9.2018

Dharambir and another

---Appellants

versus

Rajinder Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rajesh Lamba, Advocate
for the appellants**

Rekha Mittal, J.

CM No. 3913-C of 2016

Prayer in this application is for condoning delay of 5 days in filing the appeal.

Heard.

Allowed as prayed for. Delay of 5 days in filing the appeal stands condoned.

Disposed of accordingly.

RSA No. 1408 of 2016

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for permanent and mandatory injunction filed by the respondent-plaintiff was decreed by the trial court vide judgment and decree dated 23.7.2013 and appeal preferred by unsuccessful defendants-appellants did not find favour with the Additional

District Judge, Jhajjar.

The respondent-plaintiff filed the suit that father of the parties was owner of land measuring 63 kanal 9 marlas comprising khasra numbers, detailed in para 2 of the judgment of trial court. About 40 years back, father of the parties separated all his sons and allotted separate agricultural land. According to family settlement, respondent-plaintiff was allotted killa No. 62/16/2 and part of khasra No. 62/25 and northern part adjacent to Killa No. 16/2. The defendants were allotted khasra No. 81/15 and part of khasra No. 81/6 on the southern part adjacent to killa No. 81/15. The defendants got lifted soil upto the depth of 25 feet out of killa Nos. 81/6 and 15. The other co-sharers also got lifted soil from khasra numbers allotted to them for earning money by selling the soil. The respondent has not sold soil from khasra No. 16/2 and 62/25 which is in his possession for the last 40 years. He prayed for grant of injunction restraining the defendants not to change nature of the suit land and oust the plaintiff from established possession thereof.

The appellants-defendants raised certain preliminary objections, noticed by the trial court in para 3 of the judgment. They have denied the respondent-plaintiff to be in settled/exclusive possession of land comprising khasra Nos. 16/2 and 62/25.

As has been noticed hereinbefore, courts have recorded consistent findings upholding plea of the respondent-plaintiff with regard to his being in exclusive possession of land comprising the aforesaid khasra numbers, therefore, his entitlement to seek equitable and discretionary relief of injunction in the form of restraint, as prayed for.

Counsel for the appellants would urge that findings recorded by

the courts are not based upon correct appreciation of materials on record and are the result of presumptions, assumptions, conjectures and surmises. It is further argued that as the parties are co-sharers in the entire land owned by their father, the respondent-plaintiff is not entitled to injunction against their co-sharers.

I have heard counsel for the parties and perused the paper book particularly the judgments impugned.

The trial court, on a detailed consideration of the oral and documentary evidence led by the parties, has arrived at a conclusion that the respondent-plaintiff is in exclusive possession of the land in question, therefore, the appellants-defendants have no right to disturb his possession in any manner whatsoever. As has been noticed hereinbefore, findings of the trial court have been affirmed in appeal without any variance. Counsel for the appellants has failed to point out any oral much less documentary evidence to substantiate plea of the appellants that the respondent is not in exclusive possession of land comprising khasra Nos. 16/2 and 62/25. That being so, I do not find an error much less perversity in the judgments impugned when otherwise no question of law arises for determination in the regular second appeal.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

17.9.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No