

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

RSA No. 2690 of 2016 (O&M)

Date of decision : July 27, 2018

Hem Raj and another

.....Appellants

Versus

Charna Ram and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Nitish Yadav, Advocate
for the appellants.

LISA GILL, J.

The appellants who were the plaintiffs before the learned trial Court are aggrieved of judgment and decree dated 25.08.2014 passed by the learned Civil Judge (Junior Division), Patiala whereby suit for permanent injunction filed by them for restraining the defendant-respondents from interfering in peaceful possession of the suit land has been dismissed. They are also aggrieved of judgment and decree dated 21.03.2016 passed by the learned Additional District Judge, Patiala whereby the appeal filed by the plaintiff-appellants has also been dismissed.

The appellant-plaintiffs filed a suit for restraining the defendant-respondents from interfering in their peaceful possession of the suit land while claiming that one Ami Chand son of Kura Ram was the owner in possession of the land in question which was situated out of the abadi deh of the village. Ami Chand died on 28.04.2000 leaving behind the plaintiff-appellants and proforma defendants No. 9 and 10 i.e. the widow and minor child of their brother Amarjit Singh. (It is to be noted that the said performa defendants/respondents are reflected only in judgment dated 21.03.2016 passed by the learned Additional District Judge, Patiala, they do

not find mention in judgment and decree dated 25.08.2014 neither have they been reflected in the memo of parties in the present appeal). It is averred that the plaintiff-appellants came in possession of the land after death of Ami Chand being his legal heirs. The defendants, it was stated, were threatening to dispossess the plaintiffs without any rhyme and reason. Despite complaint to the police, no action was taken, therefore, the present suit was filed.

The suit was resisted by the defendant-respondents while taking a specific stand that the land in question has not been identified and neither is there anything on record to reflect that the plaintiffs are the legal heirs of Ami Chand or are in possession of the suit land. It was contended that the respondents are using the area for storing *Ruri* and in fact the plaintiffs themselves wished to forcibly dispossess the defendant of the suit land and merge the same with their adjoining land. Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP.
- ii) Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
- iii) Whether the plaintiffs have not come to the Court with clean hands and have concealed the true and material facts from the Court? OPD.
- iv) Relief.

Evidence was led by both the parties.

Learned trial Court decided issue No. 1 against the plaintiffs and issue no. 3 was decided in favour of the defendants and against the plaintiffs. Issue No. 2 was decided against the defendants. Learned trial

Court concluded that there is no evidence on record to reflect the appellant-plaintiffs to be the legal heirs of Ami Chand and neither could they prove their possession over the property in question.

Aggrieved therefrom, appeal was filed by the present appellants. The same was dismissed by the learned Additional District Judge, Patiala while upholding the findings of the learned trial Court. Present appeal was filed challenging both the judgments and decrees as mentioned above.

Learned counsel for the appellants vehemently argues that both the learned courts below have erred in holding that the appellant-plaintiffs were unable to prove that they are legal heirs of the deceased Ami Chand. While referring to the jamabandi for the year 2011-12 (Ex. P1) as well as khasra girdawari for the year 2013-14 (Ex. PZ), it is submitted that Ami Chand is proved to be the owner in possession of the property in question. Moreover, PW3 Jarnail Singh, Ex-Sarpanch of the village deposed that the present appellants are the legal heirs of Ami Chand. It is contended that the plaintiffs have also proved on record the death certificate of Ami Chand (Ex. P3). They could not have come in possession of the said death certificate, in case, they were not the sons of Ami Chand. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 25.08.2014 passed by the learned Civil Judge (Junior Division), Patiala and judgment and decree dated 21.03.2016 passed by the learned Additional District Judge, Patiala be set aside and suit filed by the appellants be decreed throughout.

I have heard learned counsel for the appellant and have also gone through the photocopies of the record furnished by him in Court today.

The plaintiff-appellants as mentioned above filed the suit seeking a permanent injunction for restraining the defendants, their agents etc. from interfering in the peaceful possession of the land in question i.e. abadi land bearing Khewat/Khatauni No. 29.13/43, Khasra No. 281/0-5 situated at village Balamgarh, Tehsil and District Patiala. In order to prove that the plaintiffs are in possession of the land, reliance has been placed on Ex. P1, jamabandi for the year 2011-12 and khasra girdawari for the year 2013-14 (Ex. PZ). Said jamabandi for the year 2011-12 reveals Ami Chand son of Kura Ram to be the owner of the land. In the khasra girdawari (Ex. PZ) nature of the land is mentioned as gair mumkin abadi and Ami Chand son of Kura Ram is mentioned in column No. 2.

The said documents reflecting Ami Chand to be the owner of the land in question are of no benefit to the appellants keeping in view the fact that there is no document on record to show that the present appellants are the legal heirs of Ami Chand. There is indeed not an iota of evidence on record to show that the plaintiff-appellants are the sons/legal heirs of Ami Chand, who passed away in April, 2000. There is no evidence on record to reflect the present appellants to be the owners of the said land.

It is relevant to note that PW1 Hem Raj in his cross examination admitted that the land in question is within abadi of Lal Lakeer of the village. He has feigned ignorance qua material questions put to him. PW1 admitted that in the site plan mark D1, space marked as A, B, C, D is the place where *ruri* is stored by the defendant-respondents. He also admitted that in the photographs, which are on record as mark D2 and D3, gate of the plaintiffs is at point B. Hem Raj, PW1 further admitted photographs mark A and B to be correct as per the existing position as per the spot. Site plan relied upon by the respondents has been admitted to be

correct by PW1, however, the said site plan does not correspond with the site plan relied upon by the plaintiff themselves. The site plan Mark X produced in Court by the plaintiff-appellants does not mention Khasra numbers neither specifies the length or breath of the property. In Ex.P2 i.e. *Aksh shajra* dimensions are mentioned and the same is rhombic in shape whereas in site plan mark X produced by the plaintiffs, the shape of property in question is reflected to be rectangular. Both the learned courts below concluded that the appellants tried to conceal material facts and did not come before the Court with clean hands. A perusal of the file, photocopy of the record furnished in Court today reveals that concurrent findings of fact have been correctly returned by the learned courts below on a proper appreciation of evidence on record which calls for no interference by this court.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal for the consideration of this Court.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in judgment and decree dated 25.08.2014 passed by the learned Civil Judge (Junior Division), Patiala as well as judgment and decree dated 21.03.2016 passed by the learned Additional District Judge, Patiala which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

July 27, 2018

rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No