

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

RSA No.5155 of 2013 (O&M)

Date of Decision.25.04.2018

Birhmo and another

.....Appellants

Vs

Satyawati and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. T.C. Dhanwal, Advocate
for the appellants.

Mr. S.P. Chahar, Advocate
for respondent No.1 and 2.

Mr. Chander Pal Tiwana, Advocate
for respondent No.3 and 4.

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AMIT RAWAL J.(ORAL)

C.M. No.13852-C of 2013

For the reasons stated in the application, delay of 13 days in
filing the appeal is condoned.

Application is allowed.

RSA No.5155 of 2013

The appellants-plaintiffs are in regular second appeal against
the concurrent finding of fact whereby the suit for declaration and
possession in respect of land bearing Killa Nos.220/16/2-22/2-23-25, 249/3-
4-8, 292/4-7/1-8 of Meham has been dismissed by the trial Court and
upheld by the lower Appellate Court.

The appellants-plaintiffs in the aforementioned suit submitted
that vide sale deed dated 21.02.1977 they purchased the land bearing Khasra
Nos.6818, 6827, 6931/5, 7642/6933, 6950/2, 6954, 6999, 6524 measuring 8
bighas 4 biswas from Sri Chand. The aforementioned khasra numbers

numbers measuring 56 kanals 11 marlas. The area remained unallotted after satisfaction of all the claim of the evacuees from Pakistan in 1947, which was given to Sri Chand in open auction meant for Scheduled Caste on 15.01.1996. The said area was purchased by the plaintiffs from Sri Chand and the plaintiffs took possession of the same including unpurchased area of Killa No.292-4 measuring 16 kanals and cultivated the same along with Ramesh s/o Nanhu but the girdawari continued to reflect in the name of Sri Chand. Defendant Nos.1 and 2 threatened that they would take possession of killa No.292/4 of village Meham forcibly during Kharif 2008 but were restrained. Defendant No.4 was asked not to interfere in the peaceful possession but they destroyed the standing mustered crop in the month of October, 2008, necessitating to file the suit.

The aforementioned suit was contested by the defendant No.1 and 2 by filing written statement and raised numerous preliminary objections. On merits, it was submitted that Killa No.292/4/1 measuring 4 kanals 4 marlas was owned and possessed by the State and it was never in possession of Sri Chand or cultivated by the plaintiffs. The land was auctioned in free auction after publicity, which was purchased by the defendant, Bakhta Ram who further sold it to defendant No.1 and 2 vide sale deed dated 21.7.2008.

Defendant No.3 and 4 filed separate written statement and denied the averments in the plaint.

Since the parties were at variance, the trial Court on the basis of pleadings framed the following issues:-

- 1. Whether the plaintiffs are entitled for relief of declaration to the effect that they are having cultivating*

possession over the suit land as alleged? OPP

2. *If the above issue is proved in affirmative whether the plaintiffs are entitled for relief of permanent injunction restraining the defendants not to interfere in their physical possession, as alleged? OPP*

3. *Whether the suit of the plaintiffs is not maintainable? OPD*

4. *Whether the suit is bad for non-joinder of necessary parties? OPD*

5. *Whether the suit of the plaintiffs are liable to be dismissed with special costs? OPD*

6. *Relief.”*

In support of averments, the plaintiff namely Ramesh appeared in the witness box as PW1, Krishan as PW2 and tendered into evidence khasra girdawari for the year 2007-2008 Ex.P1, khasra girdwari nehri for the year 2006-07, 2007-08 as Ex.P2, Mutation No.9242 as Ex.P3, receipt Rabi for the year 2003-04 as Mark A, receipt Rabi for the year 2008 as Mark B and mutation No.9243 as Mark C whereas on the other hand, defendants examined as may as four witnesses and brought on record Ex.D1 to D8, revenue records.

The trial Court and the lower Appellate Court dismissed the suit holding that the plaintiffs had not been able to prove possession, much less, ownership.

Mr. T.C. Dhanwal, learned counsel appearing on behalf of the appellants-defendants submitted that no doubt that the appellants had purchased the area mentioned in the sale deed dated 21.02.1977 from Sri

Chand but they were also put in possession of the unpurchased area and remained continue to be in possession. Documentary evidence brought on record showed the possession but the trial Court did not grant the relief of declaration, possession, much less, injunction or mandatory injunction as the Courts could mould the relief under Order 7 Rule 7 CPC, thus, there is illegality and perversity. It was the land of Central Government. The defendants had not been able to prove the sale deed as no witness of the sale deed had been examined. All these factors have not been taken care by the Courts below, thus, urges this Court for setting aside the judgments and decrees under challenge.

Mr. Chahar, learned counsel appearing on behalf of defendant No.1 and 2 submitted that the plaintiffs miserably failed to prove the possession of the unpurchased area which was sold by public auction to Bhakta Singh i.e. 4 kanals 4 marlas and purchased by defendant No.1 and 2 vide sale deed dated 21.07.2008. The registered document carries presumption of truth. There was no challenge to the aforementioned sale deed and rightly so, the suit has been dismissed, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Dhanwal, for, the plaintiffs have miserably failed to establish ownership of the unpurchased area, much less, possession. On the contrary, the sale deed dated 21.07.2008 and the auction proceedings conducted in favour of Bhakta Singh had been proved on record through documents. Even the khasra girdawari was only with regard to river action and not cultivable land.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered by both the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 25 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No