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

**RSA No.3591 of 2015 (O&M)
Date of Decision: 11.07.2018**

Bajanti Devi

.....Appellant

Vs

Partap Singh and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Bhawesh Aggarwal, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

CM No.8703-C of 2015

For the reasons mentioned in the application, delay of 3 days in filing the appeal is condoned.

Application stands disposed of.

Main case

Plaintiff is in Regular Second Appeal in a suit for mandatory injunction and declaration against the concurrent findings recorded by the Courts below.

Brief facts are that the plaintiffs filed a suit for mandatory injunction and declaration on the ground that they were owners in possession of land measuring 20 Kanals 15

Marlas apart from other land situated in village Phagli Teeka Maawa, Tehsil Dhar Kalan. Originally Parmodh Chander predecessor-in-interest of the plaintiffs No.1 to 5, Bhagwan Dass and Karam Chand were the original owners in possession. They purchased the land from original owner vide registered sale deed in the year 1969 along with other land. Parmodh Chander and Bhagwan Dass have already died. Plaintiffs claimed themselves to be co-sharers to the extent of land mentioned in the *jamabandi*. After purchase of land, predecessor-in-interest of the plaintiffs constructed the house in some part of the land and in the remaining part, he planted trees and cultivated the same.

Predecessor-in-interest of the defendants namely Sarwan Kumar was living in the verandah of the house for considerable time as a licensee and thereafter on his request predecessor-in-interest of the plaintiffs and plaintiff No.6 Karam Chand permitted him to construct a *kacha* house to live in and also for temporary shed for tethering the cattle. Sarwan Kumar was not having his own house. He was allowed to live in the accommodation as a licensee with a clear understanding that he will remove the *malba* of the house and cattle shed as and when called upon to do so by the licensor/predecessor-in-interest of the plaintiffs.

After the death of Sarwan Kumar, defendants stepped into the shoes of Sarwan Kumar and started asserting their ownership *qua* the property on which Sarwan Kumar was a licensee. They collected the building material for raising construction. Thereafter plaintiffs filed a suit for permanent injunction against the defendants. They also got the land demarcated vide demarcation dated 27.05.2005 and the licence of the defendants was revoked.

Plaintiffs also got issued notice to the defendants on 03.09.2005 thereby revoking licence of the defendants and also to deliver the vacant possession of the land under their possession after removal of *malba*. Plaintiffs also pleaded that mutation No.294 dated 26.09.2005 was sanctioned in connivance with the revenue officer on the basis of exchange of land between the parties. The same was done at the back of the plaintiffs and thereafter mutation was sanctioned illegally. Defendants did not pay any heed.

Suit was contested by the defendants on the ground that the plaintiffs have not approached the Court with clean hands. Khasra No.72 measuring 9 Kanals 9 Marlas of land was allotted to Sarwan Kumar and Khasra No.86 measuring 6 Kanals 3 Marlas of land was allotted to Bhagwan Dass during consolidation by the consolidation Authorities in the year 1981.

Since then, predecessors-in-interest of the defendants were in possession of the land so allotted by the consolidation Authorities. They had constructed their residential house and after the death of Sarwan Kumar, the defendants succeeded the estate and came into possession as owners. Plaintiffs remained in continuous possession of Khasra No.86 allotted to them by the consolidation Authorities. In respect of Khasra No.72 measuring 9 Kanals 9 Marlas of land, plaintiffs or their predecessor-in-interest had no right, title or interest in the land so allotted to Sarwan Kumar by the consolidation Authorities.

Both the Courts below have recorded the findings that prior to filing of the present suit, plaintiffs had filed a suit titled '*Bajanti Devi vs. Rattan Chand*' on 02.09.2005. A plea was taken in the said suit that the defendants were stranger to the suit property and were threatening to interfere into the peaceful possession of the plaintiffs. Plaintiffs had admitted in the said suit that Sarwan Kumar was predecessor-in-interest of the defendants and was allowed to continue in possession as a licensee. At one point of time, plaintiffs claimed themselves to be in possession of the suit property, but subsequently admitted the possession of the defendants.

The earlier suit was filed on 02.09.2005 and the present suit was filed on 17.02.2006. Issues No.2 and 3 were decided

against the plaintiffs on the basis of conceded position on record as the perusal of the *jamabandi* for the year 2007-08 would show that the land forming part of *Khasra* No.72/1 was allotted to Sarwan Kumar and he was shown to be as owner. Mutation No.326 was sanctioned on the basis of aforesaid fact.

The findings recorded by the Courts below have not been countered by learned counsel for the appellant with reference to any material on record. Distinct khasra numbers were allotted to the predecessor-in-interest of the plaintiffs and defendants.

In view of above, the findings recorded by the Courts below are not found to be perverse or the result of any misreading of evidence. No question of law worth consideration is involved in the present appeal. The same is found to be totally bereft of merits and is accordingly dismissed.

July 11, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No