

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 5251 of 2016(O&M)
Date of Decision: 8.10.2018**

Mohinder Singh (since deceased) through LR's and others

---Appellants

versus

Jatinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Dhiraj Chawla, Advocate
for the appellants**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for permanent injunction filed by the plaintiffs-respondents restraining the defendants from taking forcible possession or interfering in peaceful possession of the respondents-plaintiff qua land measuring 4 kanals, situated in revenue estate of village Mule Chak, Tehsil and District Amritsar as per jamabandi for the year 2005-06, detailed in head note of the plaint was decreed by the trial court vide judgment and decree dated 12.10.2012 that came to be affirmed in appeal preferred by the appellants and their co-defendants.

Counsel for the appellants would urge that land measuring 5 kanal 6 marlas comprising khasra No. 409 was purchased by Mohinder Singh, Mukhtiar Singh and Harbans Singh sons of Deva Singh vide sale certificate issued by Tehsildar Sales, Amritsar on 21.2.1962 and thereafter

entries were made in the records maintained by the Government with regard to delivery of possession in favour of the purchaser, evidenced by documents Ex. D9, D11 and D13. The *nehri* girdawari in the year 1994 qua *Hari* crop is Ex. D15. The appellants placed on record receipts Ex. D16 to D21 with regard to sale of crop to the Government, sufficient to rebut the entries in jamabandis relied upon by the respondents-plaintiffs regarding their possession over the suit land. It is further argued that the courts have failed to appreciate the documents relied upon by the appellants in right perspective and grossly erred in accepting plea of the respondents-plaintiffs with regard to their possession of suit land and entitlement to equitable and discretionary relief of injunction.

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

Before advertng to the submissions made by counsel for the appellants, it is pertinent to note that the court in second appeal cannot re-appreciate the evidence and differ with the findings recorded by the courts on the premise that another view is possible. Equally true is that the second appeal can be admitted for hearing if it raises a question of law for determination.

The respondents-plaintiffs produced on record series of documents, detailed in para 6 of judgment of trial court, recording possession of suit land by respondents or their predecessors.

Counsel for the appellants, in response to a query, has fairly conceded that there is no document produced/proved to show that Government took over possession of suit land at any point of time before an

entry was made with regard to delivery of possession to Mohinder Singh and others. There is a presumption in law that a person in possession of land would continue to be so unless there is evidence that he has been dispossessed either forcibly or in accordance with law or he has himself surrendered possession. *Nehri* girdawari for *Hari* 1994 cannot be taken sufficient to rebut presumption of correctness attached to entries in the jamabandis recording possession of plaintiffs-respondents. The Courts, on a detailed consideration of the documents produced by contesting parties, have rightly arrived at a conclusion that the respondents-plaintiffs have been able to substantiate their plea that they are in possession of suit land and cannot be dispossessed except in due course of law. In this view of the matter, I do not find an error much less perversity in the judgments impugned, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

8.10.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No