

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

RSA No.5613 of 2016 (O&M)

Date of decision:06.12.2018

Krishan Chand and another

... Appellants

Vs.

Rameshwar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Avnish Mittal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.14708 of 2016

The application is allowed, subject to all just exceptions. Legal representatives of appellant no.2 as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

RSA No.5613 of 2016 (O&M)

The appellants-plaintiffs no.2 and 3 have not been successful in claiming the declaration as owners with consequential relief of permanent injunction in respect of suit property.

It was asserted that successors in interest of the plaintiff was Jumna Ram, whereas, that of the defendants was Jumma son of Baru. By taking the advantage of commonality, the defendants instituted the suit for injunction in the year 1992 by mentioning the parentage as Jumma and obtained the injunction in 1997 from forcible interference and

dispossession. Owing to the prevalent policy got the lease in their favour on 09.08.1995 whereas entry in the revenue record reflected the possession of Jumna.

On the basis of the evidence brought on record, the trial Court dismissed the suit in toto. The appeal taken before the Lower Appellate Court was also dismissed.

Mr. Avnish Mittal, learned counsel appearing on behalf of the appellants submitted that in the absence of challenge to the lease deed/allotment, the Courts below ought to have granted the injunction as possession of the appellant-plaintiffs has been proved from the revenue record, jamabandi for the years 1958-59 and 1963-64, Ex.P1 and Ex.P3.

In support of the aforementioned submissions, relied upon the judgment rendered by this Court in **Som Nath vs. Lachhman Singh 2001 (1) RCR (Civil) 100** and as well as by the Hon'ble Supreme Court in **Rame Gowda (D) by LRs vs. Mr. Varadappa Naidu (D) by LRs and another 2004(1) SCC 769**. The defendants failed to prove their possession, for, lessee was in possession only on account of injunction, the injunction decree cannot be treated as ownership. All these factors have not been taken care of, thus, there is gross illegality and perversity.

I have heard the learned counsel for the appellants and appraised the judgments and decrees of both the Courts below.

The plaintiffs could not have been granted declaration in the absence of challenge to the sale deed/allotment dated 09.08.1995. Coming

to the prayer of injunction, no doubt, the person, who is able to prove the long and settled possession, cannot be ousted except in due course of law. This is what has been held by the Hon'ble Supreme Court in **Rame Gowda's case (supra)**. It was alleged that status of the plaintiffs was “Gair Marusi” and in the absence of any ejectment proceedings, the possession cannot be taken away.

I am not in agreement with the contention of Mr. Mittal, for, in order to establish the long and settled possession, khasra girdawari could have been the best piece of evidence as the nature of suit land is agricultural. Concededly, the suit was filed in the year 2005 and the last entry in the jamabandi is for the year 1993-94, Ex.P3.

In such circumstances, the findings of facts and law cannot be faulted with. No substantial question of law arises for adjudication of the present appeal.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 06, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No