

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

RSA No.5786 of 2016 (O&M)

Date of Decision.01.03.2018

Uttar Singh

.....Appellant

Vs

Bachittar Singh and others

.....Respondents

2. RSA No.5810 of 2016 (O&M)

Varinder Singh

.....Appellant

Vs

Bachittar Singh (since deceased) through LRs and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Rai, Advocate
for the appellant.

-.-

AMIT RAWAL J.(ORAL)

C.M. No.15177-C of 2016 in RSA No.5786 of 2016

C.M. No.15254-C of 2016 in RSA No.5810 of 2016

For the reasons stated in the applications, delay of 17 days in
filing the respective appeals is condoned.

Applications are allowed.

C.M. No.15178-C of 2016 in RSA No.5786 of 2016

C.M. No.15255-C of 2016 in RSA No.5810 of 2016

For the reasons stated in the applications, delay of 9 days in re-
filing the respective appeals is condoned.

Applications are allowed.

Main cases

This judgment of mine shall dispose of two appeals bearing
No.5786 and 5810 of 2016 arising out of the same judgment and decree.

The appellant-plaintiff is aggrieved against the concurrent finding of fact whereby the suit for permanent injunction seeking forcible dispossession and interference except in due course of law against the defendants has been dismissed by the trial Court and upheld by the lower Appellate Court.

The appellant-plaintiff instituted the suit in the year 2009 seeking aforementioned relief on the basis of the documentary evidence brought on record that he has been in possession of the property since long and in the revenue record, the suit land has been shown in the name of Provincial Government, much less, one entry in the name of Parmod Kumar son of Hira Lal and Kuljit Singh son of Harbhajan Singh to the extent of 993/161903 share and major share i.e. 160910/161903 in the name of Provincial Government. The plaintiff with a dint of hard work made the land irrigable and fertile and the defendant had no right or title over the suit land to alienate or dispossess the plaintiff, therefore, necessity arose to file the suit.

The aforementioned suit was challenged by the defendants by taking preliminary objections qua locus standi, much less, denied the possession of the plaintiff. It was stated that the story of alleged possession is concocted one. In fact, land was never in possession of the plaintiff but in the possession of the defendants.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiff is suppressed material facts from the Court? OPD

2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

3. Relief.”

The plaintiff in support of his case examined Pala Singh as PW1 and Angrej Singh as PW2 and tendered into evidence general power of attorney Ex.P1, copy of jamabandi for the year 2003-04 Ex.P2, Khasra girdawari from 2004-09 Ex.P3, copy of assessment of damage of crop as Ex.P6 and closed the evidence. On the other hand, defendants examined Ashwani Kumar Naib Sadar Kanungo as DW1, Hardeep Singh as DW2, Pamma as DW3, Joginder Singh as DW4 and Smodh Kumar as DW5 and tendered various documents.

Both the Courts below on the basis of evidence held that the appellant-plaintiff has not been able to bring out the case within the principles of long and settled possession for the purpose of obtaining the injunction. The entries in the jamabandies were found to be doubtful and unreliable. Though they carry presumption of truth but the defendants as per the finding have been able to rebut the same. The trial Court dismissed the suit, much less, the lower Appellate Court.

Mr. M.S. Rai, learned counsel appearing on behalf of the appellant has drawn attention of the Court to Annexures A1 to A5 i.e. jamabanies for the year 2008-2009 and 2013-2014 and khasra girdawaries for the years 1994-1999, 2009-2010 and 2015-2016 to establish the long and settled possession, thus, urges this Court to set aside the judgments and decrees rendered by the Courts below, owing to the fact that the appellant-plaintiff has been able to prove the long and settled possession.

I have heard learned counsel for the appellant and appraised the

paper book. All the aforementioned documents have not been placed on record before the Courts below, much less, placed on record before this Court by taking the aid of provisions of Order 41 Rule 27 CPC. They are merely annexed as Annexures. No explanation has come forth that despite due diligence, the appellant-plaintiff had not been able to place on record the same during the course of hearing as the suit was filed in the year 2009 and decided by the trial Court in 2014. For the purpose of seeking or obtaining injunction as noticed above, the plaintiff is required to prove long and settled possession but not a short and undisturbed possession. The Courts below being the courts of fact and law after examining the witnesses found that the plaintiff could not bring the case within the aforementioned principles.

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

(AMIT RAWAL)
JUDGE

March 01, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No