

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

RSA No. 610 of 2016(O&M)

Date of decision: 26.9.2018

Anita Rani and another

.....Appellants

VERSUS

Purshotam and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the respondents from interfering in peaceful possession of appellants/plaintiffs qua suit land, detailed in paras 1 and 3 of the plaint as well as in site plan as ABCD situated in abadi kasba, Karnal and further restraining the respondents from dispossessing the appellants from suit land was dismissed by the trial Court vide judgment and decree dated 25.02.2012 that came to be affirmed in appeal by the Additional District Judge, Karnal on 18.09.2015.

A relevant extract from order dated 27.08.2018 passed by this Court reads as follows:-

“The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction filed by plaintiffs/appellants claiming themselves to

be in possession of land measuring 20 bigha 3 biswas of khasra No.4500 was dismissed primarily on the ground that in Civil Suit No.461 of 1999, land subject matter of khasra No.4500 (30 bigha – 18 biswa) was involved and the said litigation was decided against the plaintiffs/appellants. In para 30 of the judgment of trial Court, it has been noticed that the appellants/plaintiffs have asserted that they were in possession of the suit land and have been illegally dispossessed from the same on 06.04.2007 by Balbir Dewan and Vikram Rana, who are not a party to the lis.”

Counsel for the appellants has submitted that findings recorded by the Courts are not based upon correct appreciation of materials on record. It is further argued that even if the appellants have been dispossessed during pendency of suit by Balbir Dewan and Vikram Ran, the Court was obliged to allow restoration of possession as the appellants have been dispossessed during pendency of suit. Another submission made by counsel is that Nangu Ram @ Sher singh respondent/defendant No.4 is the henchman of said Balbir Dewan and Vikram Rana who admitted that he is taking care of the cold storage built on the suit land, therefore, failure of the appellants to implead Balbir Dewan and Vikram Rana as a party or amendment of the plaint cannot be allowed to enure to benefit of the respondents/defendants.

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

The Court, in appeal in para 13 of the judgment has held, reads as follows:-

13. The plaintiffs filed the suit for permanent injunction claiming that they are in possession of the suit land comprised in khasra No.4500 but a perusal of the revenue record i.e. khasra girdawari Ex.P4 for the year 2001 to 2005, shows that the total area of khasra No.4500 is 30 Bighas 18 Biswas and the suit land is recorded as Gair Mumkin Karkhana. Thus, the revenue record also does not at all help the plaintiffs to prove their possession over the suit property. Since, the plaintiffs were out of possession of the suit land and they did not get their plaint amended seeking the relief of mandatory injunction directing Balbir Dewan to restore back the possession of the suit property to them and the application filed by the plaintiffs u/s 151 of CPC for restitution of possession of the suit property back to them was withdrawn by the plaintiffs-appellants, therefore, the plaintiffs were not entitled to the relief of permanent injunction and the learned lower court has rightly held so.”

Counsel for the appellants has not disputed that the appellants did not seek amendment of the plaint for restoration of possession of suit property from Balbir Diwan etc. On the contrary, application filed under Section 151 CPC for restitution of possession of suit property was withdrawn.

Taking into consideration the observations made by the Court in appeal extracted hereinbefore holding that the appellants are not in possession of suit land and have been dispossessed by a third party, no error much less perversity, in consistent findings recorded by the Courts negating plea of the appellants for grant of injunction, can be noticed.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to right of the appellants to seek appropriate remedy in law qua alleged dispossession.

SEPTEMBER 26, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no