

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

RSA No.6348 of 2016 (O&M)

Date of decision:16.05.2018

Birda Ram and another

... Appellants

Vs.

Roshan Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

AMIT RAWAL J. (Oral)

The appellant-plaintiffs are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit seeking permanent injunction of forcible interference and possession in respect of suit land against the respondent-defendants, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Mr. Sanjay Mittal, learned counsel appearing on behalf of the appellant-plaintiffs submits that the suit aforementioned was based upon the pleadings that predecessors in interest of the plaintiffs had been in possession of the suit land bearing khasra no.1681(0-8) as per the jamabandi for the year 1989-90. It was in the ownership of Mohammedans, who left the country and the same vested into the hands of custodian department. The father of the plaintiffs was a tenant/gair marusi over the suit land at the time of Mohammedans. When the defendants threatened to dispossess the

plaintiffs, necessity arose to file the suit and an application was moved to the police on 19.4.2006 and the police had refrained to dispossess the plaintiffs from the suit land.

The defendants contested the suit by denying the possession of the plaintiffs, rather it was stated that the land was in possession of the defendants, who purchased the same in auction by giving a bid of ₹50,000/-.

The Courts below non-suited the appellant-plaintiffs by noticing the fact that auction proceedings were challenged by them. In fact, the plaintiffs had lost the right of challenging the auction proceedings, therefore, the findings are incorrect, for, after filing of the suit local commissioner had visited the spot. Realizing that injunction could not have been granted as finding of fact and law to the fact that plaintiffs were not found to be in possession of the suit land, therefore, a prayer was made for withdrawal of the suit with liberty to claim appropriate remedy, in accordance with law.

I have heard the learned counsel for the appellant-plaintiffs, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Mittal, for, the plaintiffs had been able to bring on record jamabandi for the year upto 1989-90 to show the alleged possession, whereas, the suit was filed on 24.04.2006. On the other hand, defendants have brought on record copy of auction proceedings. However, the Courts below found that auction proceedings were conducted on 22.7.1999 which is not in dispute.

Be that as it may, even if the auction proceedings were not in dispute, filing of the objections at the instance of the appellant-plaintiffs itself was a clincher that they had interest in the property. A person who comes to the Court to seek equity must do equity. It was also obligatory for the plaintiffs to produce on record the evidence preceding to filing of the suit to seek relief of injunction by establishing long and settled possession. In the absence of the same, the Courts below have rightly rejected the relief.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No