

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

RSA No.6367 of 2016 (O&M)

Date of Decision: 5.4.2018

Jarnail Singh and others

---Appellants

Versus

Kapoor Chand @ Ka-pooria (deceased)
through LRs and another

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Diwan S. Adlakha , Advocate
for the appellants.

HARINDER SINGH SIDHU, J.

CM No.16712-C of 2016 has been filed for impleading legal representatives of Janki Ram – appellant No.3, who is stated to have died during the pendency of the first appeal before the lower Appellate Court.

For the reasons stated in the application, the same is allowed and the persons mentioned in para 2 of the application are impleaded as legal representatives of the deceased Janki Ram, subject to all just exceptions.

RSA-6367-2016 :

Plaintiffs have filed this regular second appeal assailing the judgment of the learned lower appellate court whereby the judgment and decree dated 3.11.2012 of the trial court allowing their suit was set aside.

Plaintiffs filed a suit for permanent injunction for restraining the defendants from interfering in their actual, peaceful and physical possession over the land measuring 2 kanals 2 marlas being the 2/3rd share of the plaintiffs in the total land measuring 3 kanals 2 marlas situated in the revenue estate of village Lawana, District Yamunanagar. It was the case of the plaintiffs that the said land was allotted to the father of plaintiffs and defendant no.1 as 'bhondedaran' being inhabitants of village Lawana. After the death of the father of the plaintiffs, mutation of inheritance was sanctioned in favour of the plaintiffs vide mutation No.577 and 578 respectively. Previously, the land was cultivated jointly by the plaintiffs and the defendants but two years ago the suit land was divided between them. Thereafter, the defendants were in cultivating possession of land towards western side whereas the plaintiffs were in possession of the land on the eastern side and there exists a partition doli between the land of the plaintiffs and the defendants. It was further pleaded that the defendants had constructed a residential house in 10 marlas of land which fell to their share and the remaining part of their property was lying vacant and was used for sowing fodder. It was pleaded that in the property which fell to the share of the plaintiffs, they had sowed sugarcane crop. The defendants threatened to cut and remove the sugarcane crop of the plaintiffs forcibly. Plaintiffs had even reported the matter to the village panchayat but to no avail. Hence the suit.

The case of the defendants was that they were residing in land measuring 3 kanals 2 marlas situated at a distance about 1.5 kilometers from the village. It was denied that the suit property had ever been divided in the

manner as alleged by the plaintiffs. It was also denied that the plaintiffs were in possession of any inch of the land in question. Rather it was stated that the defendants were in actual physical possession of the suit land as it had fallen to their share in a family partition effected 40 years earlier. It was also asserted that the sugarcane crop standing in the suit property belonged to the defendants.

The Learned Trial Court decreed the suit of the plaintiffs. It was held that the suit property had been allotted to the father of the plaintiffs and defendant no.1 as 'bhondedaran'. After the death of the father of the plaintiffs, mutation of inheritance was entered in their names. In the affidavit of Karnail Singh, Ex.P8, it had been mentioned that defendant Kapoor Chand was not cultivating the land as 'bhondedaran'. In an earlier litigation, Karnail Singh had stated that there is 'partition dol' in the suit land. In the reply filed by defendant Kapoor Chand to the application for correction of khasra girdawari moved by the plaintiffs he had stated that the suit property was not in exclusive possession of the defendants. The Trial Court recorded that though in the jamabandi for the year 2003-4, the plaintiffs and defendants had been shown as co-sharers of the suit property but the mutation entries showed the plaintiffs as owner in possession of the property. That coupled with the existence of a 'partition dol' over the suit property indicated that there was division of the suit property on the spot and that the parties were in exclusive possession of the suit property in accordance with their shares as indicated by the 'partition dol'. It held that the exclusive possession of the plaintiffs had to be protected till the suit property is finally partitioned.

The Learned lower appellate court however, reversed the finding of the Trial Court. It was held that in the jamabandis for the years 1993-94, 1998-99, 2003-04, 2008-09, the parties had been shown as co-sharers. The khasra girdawaries on record also depicted the parties to be in cultivating possession of the land. The plaintiffs had moved an application for correction of khasra girdawaris which was dismissed by Assistant Collector, 2nd grade, Mustafabad vide his order dated 14.12.2010. This also established the fact that the parties were co-sharers. It was thus held that the plaintiffs had failed to prove that they were in exclusive possession over the land in question. It was held that the learned Trial Court had erred in treating the plaintiffs to be in exclusive possession over the suit land merely on the basis of mutation in their favour. The Court further held that the mere existence of 'partition dol' over the suit land does not establish that there was a division amongst the co-sharers, particularly as there was no family arrangement/settlement on record to indicate that the parties were in exclusive possession of their shares after division of the property. As the evidence indicated that the parties were co-sharers and the exclusive possession of the plaintiffs over the suit property was not proved, the judgment and decree of the Trial Court was set aside and the suit of the plaintiffs was dismissed.

Findings of fact have been recorded by the learned lower appellate court which are as per the evidence on record. The plaintiffs have not been able to establish their exclusive possession over the suit property. Ld. Counsel for the appellant has not been able to show as to how the

findings recorded by the Ld. Lower Appellate Court are perverse or against

the evidence on record.

No question of law arises for decision in this appeal.

Dismissed.

April 05, 2018

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(**HARINDER SINGH SIDHU**)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No