

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

RSA No.3023 of 2014 (O&M)

Date of Decision: February 20, 2018

Amrik Singh and another

...Appellants

Versus

Harbans Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Sukhpreet Kaur, Advocate
for the appellants.

Mr. Sarabjeet Singh, Advocate
for respondent No.1 to 5.

FATEH DEEP SINGH, J.

After having been unsuccessful throughout, the plaintiff whose suit initially stood dismissed vide judgment and decree dated 21.02.2002 by the Court of learned Civil Judge, (Senior Division) Sultanpur Lodhi and subsequent dismissal of his appeal challenging the said findings by the Court of learned Additional District Judge, Kapurthala through judgment dated 18.12.2013 upholding the findings of the trial Court has come up in this regular second appeal.

Heard, learned counsel for the parties and perused the records of the case.

The brief facts are that plaintiff-Amrik Singh filed suit against defendant Harbans Singh and others seeking decree for permanent injunction restraining the defendants from taking forcible possession or otherwise interfering in the possession of the plaintiff in the land detailed in the head note of the plaint. The claim of the plaintiff is that he is in exclusive possession of this property which falls in village Mand Dhun,

Tehsil Sultanpur Lodhi and forms part of the river and had been cultivating the same and the defendants are trying to take forcible possession by ousting the plaintiff from his legitimate possession. The stand of the defendants is of total denial stating that plaintiff never remained in possession of the suit land nor has any right to restrain the true owner from using their own land. From the pleading of the parties the trial Court framed following issues:-

1. Whether the plaintiffs are estopped by their own act and conduct to file the suit? OPD
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiffs have no locus-standi to file the present suit? OPD
4. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP
5. Whether the plaintiffs are in possession of the suit land? OPP
6. Relief.

In his evidence plaintiff examined PW1 Harbahajan Singh, who tendered his affidavit Ex.PW1/A, PW2 Subeg Singh, who tendered his affidavit Ex.PW2/A, PW3 Gurcharan Singh, who tendered his affidavit Ex.PW3/A and PW4 who tendered his affidavit Ex.PW4/A. On the other hand, defendant No.1 Harbans Singh examined himself as DW1 and got corroboration from the testimonies of DW2 Baldev Singh, DW3 Bhagwant Singh and closed their evidence. The trial Court dismissed the suit of the plaintiff and so was his appeal.

Appreciating the submissions of the two sides and going through the records of the case, learned counsel for both the sides readily accept the proposition of law that it is the plaintiff who has to prove his case to the hilt. The own stand of the plaintiff that he is in possession of

the suit land rather invariably lead to inference that he does not claim his ownership. The own document of the plaintiff jamabandi Ex.P1 and Khasra girdawaries Ex.P2 to Ex.P4 bear out that there are numbers of owners of this property and the contentions that are there before this Court that it is part of the river is itself reflective from the revenue records as according to the khasra girdawaries the land is shown to be totally vacant rather adds to the suspicion of the Court that all was not well with the stand of the parties and there is no legal and legitimate possession shown in favour of the plaintiff in any of the revenue records. No doubt, as is there in settled proposition of law reliance placed on **2008(2) RCR (Civil)879 Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and others** that in a suit for injunction question of title does not arises nor supposed to be adjudicated and that the Court cannot go into the very question of title as is laid down in **2007(3) RCR (Civil) 680 Ramji Rai and another vs. Jagdish Malllah (Dead) through LRs and another** so rightly the Courts below have not ventured into the claim of the defendants as to the title so laid by them and has rightly evaded from making any observation thereon. Since the plaintiff claims to be in possession onus certainly lays upon him in terms of Sections 101 and 102 of Evidence Act and he is supposed to initially prove his onus and once he does so he stands discharged and onus shifts upon other side but at the very first stage has never arisen in this case. Reliance placed on **2006(3) RCR (Civil) 347 Anil Rishi vs. Gurbaksh Singh** and **1998(2) RCR (Civil) 292 Punjab Urban Planning and Dev. Authority vs. M/s Shiv Sarawati Iron and Steel Re-Rolling Mills**. Besides the fact that it is settled proposition of law and has been taken note by the learned first Appellate

Court in the impugned findings that in the absence of true ownership even decree for permanent injunction cannot be granted and in the present case as has been contended by the respondents side and which cannot be controverted by learned counsel for the appellant as to the absence of true and lawful owner, if any, in the present suit. Neither it has come up since how long and in what capacity the plaintiff claimed to be in possession certainly disentitles him to any relief. Learned first Appellate Court has taken into consideration statements of PW1 to PW4 to hold out that the plaintiff even has failed to prove his possession for the years 2004-2006 and any such stray entry in khasra girdawari records does not corroborates the stand of the plaintiff or substantiates it. The learned Court below has rightly returned the findings on the issues. Learned counsel for the appellant could not convince this Court, how there has been misconstruing of evidence of the parties led on the records by the Court below or there has been misapplication of the settled proposition of law, establishment by plaintiff of prima facie case, balance of convenience and irreparable loss is not there.

Thus, in view of what has been detailed and discussed above, there is no illegality or perversity in the findings of the two Courts below which deserve to be upheld. Thus, the present appeal being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 20, 2018
aarti

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No