

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

**Regular Second Appeal No.1162 of 2018 (O&M)
Date of Decision: March 06, 2018.**

Sheodan and others

.....APPELLANT(s).

VERSUS

Ajay Yadav and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Arnav Sood, Advocate
for the appellant (s).

Mr. Ashwani Talwar, Advocate with
Mr. Akshay Bansal, Advocate
for the caveator-respondent No.2.

SURINDER GUPTA, J.

This is appeal against the judgement of the first Appellate Court, whereby suit of the plaintiffs-respondents was decreed for declaration to the effect that they are owners of the suit land and the impugned order dated 29.06.2012 passed by Assistant Collector 2nd Grade is illegal, null and void. A decree was also passed in favour of plaintiffs for possession of the suit land and direction was issued to defendants-appellants to hand over the vacant possession of the suit land to the plaintiffs within a period of two months from the date of judgement and decree passed by the first Appellate Court.

Learned counsel for the appellants has assailed the judgement

of first Appellate Court on the ground that plaintiffs claimed to be in possession of the suit land and sought alternate relief that in the event of their dispossession during the pendency of the suit, they be allowed relief of possession of the same. The plaintiffs failed to prove that they have been dispossessed during the pendency of the suit, as such, the judgement and decree passed by first Appellate Court decreeing the suit for possession, is illegal. In support of his contention, he has relied on the observation of this Court in ***Khilanda Ram Vs. Ram Sahai and others, RSA No.2688 of 1987 (decided on 30.03.2016)***, wherein, it has been observed in para 29 as follows:-

“29. Fourth relief sought by plaintiff that in the event of plaintiff being dispossessed by the defendants during pendency of suit a decree for possession be passed in his favour, cannot be allowed as there is no evidence that plaintiff was dispossessed during pendency of suit.”

Learned counsel for the appellants has further argued that Civil Court was not competent to look into the legality and validity of the order passed by the Revenue Court regarding entry in the jamabandi/khasra girdawari. He has, however, fairly conceded that plaintiffs are owners of the suit land.

Learned counsel for caveator-respondent No.2, who has filed the caveat, has put in appearance and heard.

Firstly, this argument of learned counsel for appellants that the first Appellate Court was not competent to allow the relief of possession as plaintiffs failed to prove their dispossession during the pendency of the suit, is misconceived. The prayer clause of the suit clearly shows that plaintiffs

have sought alternate relief of decree of possession of the suit land in case defendants are held to be in possession of the same. It was observed by the first Appellate Court and also by learned Civil Judge (Sr. Division) that defendants are in possession of the suit land. It is not disputed that plaintiffs are owners of the suit land and being owners, they are entitled to seek possession of the same. First Appellate Court has categorically observed that *“the defendants could not disclose as to what was their status and in what capacity, they were holding possession over the suit land. They are neither tenants, nor owners, nor lessees and hence, their possession cannot be in any legal capacity and they are thus, in illegal occupation of the suit land.”*

Learned Civil Judge while dismissing the suit, has taken note of the fact that plaintiffs had purchased the suit land. However, while dismissing the suit, it was observed as follows:-

“Third plea of the plaintiffs is with respect to their possession. Except recital in the sale deed regarding delivery of possession nothing has been shown by the plaintiffs that they had ever been in the possession of the property. Even plaintiff has admitted in her cross-examination that it is defendants who are in possession of the property. Although, it is stated that defendants have taken the forcible possession during the pendency of the case but she was unable to specify time or month in this regard. As per settled Law, suit of the plaintiffs for permanent injunction is maintainable, when plaintiffs have proved their possession over the property. Whereas, in this case, plaintiffs have not shown even a single evidence to support their plea. No electricity bill or water connection bill etc. has been tendered in this regard. No person from

the (sic. Neighbourhood) has been examined, which can suggest their possession over the property”.

Learned Civil Judge appears to have over looked the relief claimed by the plaintiffs claiming possession of the suit land on the basis of their title. In case of *Khilanda Ram Vs. Ram Sahai and others(supra)*, the plaintiff had not claimed relief of possession on the basis of title. He was rather claiming that he is owner-in-possession and had sought alternate relief of possession in the event of his dispossession during pendency of the suit. The observations in that case are not applicable to the facts of the present case as in that case, plaintiff had not sought relief of possession on the basis of title. He has confined the relief only to the extent that if he is dispossessed during pendency of the suit, he be allowed the relief of possession. It is also apparent that the appellants have earlier filed a civil suit No.174 of 1998 claiming declaration that they are owners in possession of the suit land (except land bearing Killa No.20 and 21) and their suit was dismissed, the appeal filed by the appellants (bearing C.A. No.71 of 18.09.2002), was also dismissed vide judgement dated 24.08.2005 by Additional District Judge, Gurgaon. That judgement between the parties has attained finality.

The question in this case is about capacity in which the appellants are in possession of the suit land and admittedly they could not prove on record their status of possession. In these circumstances, they are in illegal and unauthorised possession of the suit land and the first Appellate Court has committed no error of law while decreeing the suit of the plaintiffs and allowing the plaintiffs, being owners, to have the possession

So far as this argument of the learned counsel for the appellant that the order of the Assistant Collector 2nd Grade recording the entry in the khasra girdawari regarding possession of the suit land in favour of appellant cannot be challenged before the Civil Court also carries no weight. This entry is irrelevant, as the first Appellate Court has passed the decree of possession in favour of plaintiffs. Even if this entry stands in the name of appellants, plaintiffs are entitled to execute the decree of first Appellate Court and seek possession of the suit land.

On perusal of the record and judgment of the first Appellate Court, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

March 06, 2018
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***