

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

RSA No.5453 of 2014 (O&M)

Date of decision : 05.09.2018

Resham Kaur and others

...Appellants

Versus

Dyal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pardeep Bajaj, Advocate for the appellants.

Mr. Nitin Verma, Advocate for
Mr. Sameer Sachdeva, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the judgment passed by the First Appellate Court reversing the judgment of the trial Court.

The plaintiff-Dyal Singh filed a suit for permanent injunction claiming that he is in settled possession of land measuring 2 kanals and 2 marlas and the defendants be restrained from interfering or forcibly dispossessing the plaintiff. The plaintiff claims that he is in possession for the last 20 years having made the land in dispute cultivable.

The defendants contested the suit and pleaded that they are owners to the extent of land measuring 6 kanals in the joint khata of 48 kanals.

The defendants have further pleaded that the partition proceedings were filed which were decided on 21.02.2011 by the competent court of jurisdiction and pursuant thereto in execution of the decree for partition, the possession was delivered to the defendants on 30.05.2011 by delivering of actual possession and making an entry in the record of the Revenue Official.

The plaintiff filed a suit on 20.06.2011 claiming the right of permanent injunction.

Learned trial Court after relying upon the partition proceedings and delivery of possession as ordered by competent court of jurisdiction, dismissed the suit while recording the finding that the plaintiff has failed to show his possession on the date of institution of the suit. However, the First Appellate Court reversed the finding on two issues, firstly, one of the defendant when appeared in the evidence has admitted that the plaintiff is in cultivating possession for the last 25 years. Secondly, the partition proceedings have taken place during the pendency of the suit and, therefore, that would not affect the rights of the suit.

It is admitted position that on second point, finding of the learned First Appellate Court is factually incorrect. The partition proceedings became final on 21.02.2011, whereas the possession of the land in dispute was delivered on 30.05.2011. The present suit was filed on 20.06.2011. Hence, the First Appellate Court has committed factual error in recording a finding that the partition has taken place during the pendency of the suit.

It is well settled that one line in oral cross-examination cannot be read in isolation of the entire statement. The statement of a witness has to be read in entirety. The defendant-appellant namely Sukhdev Singh when appeared in the evidence, has specifically stated that the land which is owned by the Government is in possession of various other persons. He has also specifically stated that for the last 10 years, sometime the plaintiffs were in possession and sometime they were in possession. However, it has been specifically stated that on 30.05.2011, the possession was delivered and thereafter even the revenue record proves that they continue to be in possession. The plaintiff has not led any evidence to prove that daily diary report entered on 30.05.2011, evidencing the delivery of possession was in fact sham. In the present case, before institution of the suit by the competent court of jurisdiction in execution of decree for partition, had delivered the possession to the defendants-appellants.

One line in oral evidence at the time of cross-examination cannot be used against the defendants to take away the possession of the property which has been delivered in execution of the decree. It may be noted that the plaintiff does not claim any right, title or interest in the property except that he is in possession of land measuring 2 kanals 2 marlas for 20 years. Neither the plaintiff claims the tenancy nor ownership nor any other right. Hence, the plaintiff is not entitled to any injunction against true owners. Still further, the plaintiff has not led any evidence to prove that how he entered into possession after 30.05.2011.

Keeping in view the aforesaid discussions, the judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

05.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No