

RSA No.3001 of 2017 (O&M)

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

RSA No.3001 of 2017 (O&M)
Date of decision: 17.05.2018

Joginder Singh (deceased) through his LRs and another
.....Appellants
versus

Piara Singh and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. S.K. Mahajan, Advocate, for the appellants.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful defendants, after losing in both the Courts below, have preferred this Regular Second Appeal against the judgment and decree of the First Appellate Court dated 14.03.2017, affirming the judgment and decree of the trial Court dated 28.01.2013, whereby suit of the respondents-plaintiff for permanent injunction, restraining the appellants from interfering into their possession and dispossessing them from the suit land, was decreed, with a direction that respondents-plaintiff would not be evicted from the suit property except in due course of law.

Learned counsel for the appellants *inter alia* contends that both the Courts below have failed to appreciate that vide resolution (Ex.D1) of the Gram Panchayat, the possession of the suit land was handed over to the appellants for construction of Dharamshala-cum-Gurdwara. Thereafter appellants-defendant constructed a Gurdwara and Dharamshala thereon, which are integral part of each other. Both the Courts below also failed to appreciate that since Gurdwara and Dharamshala are in existence on the suit land, therefore, respondents-plaintiff could not have been in possession of the same as *gair marusi*. The revenue authorities categorically declared possession of the appellants over the suit land, which fact was illegally

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ignored by both the Courts below. As on date, “Guru Granth Sahib” is placed in the suit land for worship by inhabitants of the Village. Therefore, by no stretch of imagination, possession of the respondents-plaintiff could have been declared over the suit land. Both the Courts below did not appreciate that challenging orders of the revenue authorities, respondents-plaintiff had filed CWP No.19288 of 2009 before this Court, wherein on 02.02.2010 order of *status quo* was passed, which proves the possession of the appellants over the suit land. In a suit for permanent injunction filed by the appellants against the respondents-plaintiff, the trial Court vide order dated 15.02.2013, after passing of the judgment in the instant case by the trial Court, directed to maintain *status quo*, qua possession. Ignoring above factors, both the Courts below have wrongly decreed the suit of the respondents-plaintiff.

Having given considerable thought to the submissions made by learned counsel for the appellants, this Court finds that instant appeal is completely devoid of any merit for the reasons to follow.

No question of law, much less substantial, has been raised in this appeal.

Both the Courts below have recorded concurrent findings, holding possession of the respondents-plaintiff over the suit land.

The appellants have staked their claim of possession over the suit land on the basis of resolution (Ex.D1) passed by Gram Panchayat of Village Chuhewal, vide which it was donated to the appellants. However, both the Courts below have rightly ignored above resolution (Ex.D1) being not legally proved by examining its author or any member of the Gram Sabha or Panchayat in whose presence and consent, it was passed. This

Court is also of the considered opinion that without formal proof, alleged

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resolution (Ex.D1) could not have been taken into consideration.

Revenue authorities have also changed entries qua possession over the suit land in favour of the appellants after 2005, though they have claimed their possession over the same since the year 1981 on the basis of resolution (Ex.D1). Therefore, revenue authorities have also negated the above plea of the appellants-defendant.

That apart, appellants did not produce any evidence as to whether Gram Sabha or Gram Panchayat, Chuhewal, had authority to donate the suit land to the appellants under some law, regulation or notification of the Government. In the absence of any such proof, resolution (Ex.D1), donating the suit land to the appellants, is completely meaningless, having no sanction of law, inasmuch as every Gram Panchayat or Gram Sabha is governed by certain rules, regulations and enactments.

Delivery of physical possession of the suit land to them was also not proved by the appellants. Contrary to it, respondents-plaintiff, by producing revenue record in the shape of *misal hakiat* (Ex.P3/A), proved their long possession over the suit land since 1961. Both the Courts below have legally ignored documents Ex.D11 to Ex.D16 produced by the appellants, being came into existence during the pendency of the suit, inasmuch as possession of the parties had to be seen by both the Courts below on the date of filing of the suit. Since respondents have been able to prove their possession since 1961 by virtue of *misal hakiat*, therefore, any document created during the pendency of the suit was not liable to be taken into consideration.

More-so, both the Courts below have not declared respondents-plaintiff as owner of the suit land, rather they have simply observed that respondents would not be liable to be evicted, except in due course of law.

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Till date, appellants, on the basis of their alleged possession or Gram Panchayat or Gram Sabha, have not initiated any eviction proceedings or filed any suit against the respondents-plaintiff for possession or for declaration that respondents-plaintiff are not in possession of the suit land.

It is pertinent to mention here that the appellants before the First Appellate Court moved application under Order 41 Rule 27 CPC to produce order dated 15.02.2013 of the trial Court, whereby both the parties were directed to maintain *status quo* in a separate suit filed by the appellants for permanent injunction against the respondents-plaintiff to restrain them from interfering into alleged possession of the appellants, but final outcome of the said suit has not been brought on the record by the appellants. Therefore, adverse inference can be drawn against them that their suit must have been dismissed, negating their claim qua possession over the suit land. Order aforesaid dated 15.02.2013 of the trial Court must have merged in the final decision, therefore, could not have been looked into by the First Appellate Court. In these circumstances, application of the appellants for additional evidence to produce the same was rightly rejected.

I have gone through the impugned judgments of both the Courts below and find no ambiguity or illegality in the same.

Resultantly, the appeal, being devoid of any merit, is hereby dismissed.

(Ramendra Jain)
Judge

May 17, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No