

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

RSA No.2592 of 2018 (O&M)
Date of decision: 15.10.2018

B.L. Yadav (deceased) through LRs

..... Appellant

Versus

Vijay Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ajay Jain, Advocate for the appellant.

Ms. Pratibha Yadav, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant through his legal heirs is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

This Court at the time of preliminary hearing after examining the facts had passed the order dated 14.05.2018 which is extracted as under:-

“CM-7657-C-2018

Pursuant to order dated 7.5.2018, the learned counsel for the applicant-appellant has filed this application seeking permission to implead LR of appellant No.1 (c) Smt. Sarti, who as per application have succeeded to estate of deceased by way of natural succession.

In view of the reasons mentioned in the application, the same is allowed and the proposed LR of Smt. Sarti are brought on record.

CM-6805-C-2018

At this stage, learned counsel for the applicant-appellant seeks permission to withdraw the earlier application filed by him for impleading LR of appellant No.1(c).

Civil miscellaneous application is dismissed as withdrawn.

RSA-2592-2018

The appellant-defendant has filed this appeal challenging judgment and decree dated 3.2.2018 wherein a decree of possession granted in favour of the respondent-plaintiff in respect of the suit property have been affirmed.

I have heard the learned counsel for the appellant-defendant.

There are concurrent findings of the lower Court to the effect that the appellant-defendant has encroached upon the suit property by raising boundary wall. The said findings are based on a demarcation report (Ex.PW-5/B) conducted by PW-5 Suresh Kumar, Halqa Girdawar and report (Ex.PW-8/C) of Tehsildar, Kanungo Rewari, proved by PW-8 Ramesh Girdawar.

I do not find any infirmity in the aforesaid concurrent finding. However, I find that the respondent-plaintiff, as per the Jamabandi for the year 2012-13 Ex.P-1 are recorded as co-owners of the suit property along with various other co-owners including Smt. Sarti. In these circumstances, the relief granted to the defendant-plaintiff ought to have been of joint possession rather than possession.

Notice of motion to respondent No.1 only for 9.7.2018. An additional set of summons be issued for effecting service upon respondent No.1 by way of dasti process for the date fixed.”

So the only issue which survives for determination is whether against Smt. Sarti being legal heir of Sh. B.L. Yadav also being co-sharer in the joint khewat, a decree for possession could be passed.

In the present case, the suit was filed against late Sh. B.L. Yadav.

The prayer made in the suit is extracted as under:-

“A. A decree possession regarding agricultural land comprised in Rect. No.13, Killa No.7/1 and 8/1 from defendant No.1A to 1C situated at village Devlawas Tehsil and District Rewari by dismantling the boundary wall and construction at the cost of the contesting defendants and the possession thereof be handed over to the plaintiff and proforma defendants be passed in favour of the plaintiff and proforma defendants against contesting defendants.

B. That the contesting defendants be restrained from raising construction in any manner over the property in dispute be passed in favour of the plaintiff and against the contesting defendants.

C. That cost of the suit be awarded in favour of the plaintiff and against the contesting defendants.

D. Any other relief to which the plaintiff and proforma defendants are found entitled to be also granted in their favour.”

Learned trial Court granted the decree which reads as under:-

“It is ordered that the suit of the plaintiff is decreed with costs. A decree of possession is passed in favour of plaintiff and against the defendant No.1A to 1C. Plaintiff is entitled for the possession of land comprised in Killa No.7/1 and 8/1 of Rect. No.13, being co-sharer.”

No doubt, Smt. Sarti in her individual capacity is defendant No.11 in the plaint but she has been impleaded as proforma defendant. Sarti in her individual capacity did not contest the suit. Its a different matter that Smt. Sarti has also been impleaded as one of the legal heir of late Sh. B.L. Yadav.

Once the decree is only against defendant No.1-A to 1-C i.e. successor-in-interest of late Sh. B.L. Yadav including Smt. Sarti, therefore, the status of Sarti as legal heir of B.L. Yadav is not of a co-sharer. Smt. Sarti may be co-sharer in her own right but she is not a co-sharer being legal heir of B.L. Yadav. Demarcation have been carried out twice and unauthorized encroachment has been found at the hands of late Sh. B.L. Yadav. In these circumstances, the decrees passed by the Courts does not require any interference.

Hence, the appeal is dismissed.

15.10.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No