

RSA No.3869 of 2017 (O&M)

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

RSA No.3869 of 2017 (O&M)
Date of decision: 11.01.2018

Bhupender Kumar

.....Appellant

versus

Jitender Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Vikas Mohan Gupta, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

Through instant Regular Second Appeal challenge has been laid to the judgment and decree dated 25.05.2017 of the First Appellate Court reversing the judgment and decree dated 29.07.2015 of the trial Court.

Put pithily, the appellant claiming himself to be in possession of the suit property measuring 59 kanal 7 marla situated in the revenue estate of Village Nandrampur, Tehsil Dharuhera, District Rewari, as *gair marusi*, filed a suit for permanent injunction for restraining the respondent-defendants from interfering into his alleged peaceful possession except in due course of law with alternative prayer to hand over the possession back to him, in case, during the pendency of the suit, the respondent-defendants succeed in taking forcible possession.

The respondents-defendant contested the suit pleading that the

instant subsequent suit of the appellant-plaintiff was barred by Order 2

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Rules 2 and 3 CPC as well as by the doctrine of *res judicata* inasmuch as the earlier suit claiming the same relief was dismissed on 30.11.2011. On merit, denying the claim of the appellant-plaintiff in toto, prayer for dismissal of the suit was made.

The trial Court after framing necessary issues and recording evidence of both the sides to their satisfaction, decreed the suit vide judgment and decree dated 29.07.2015.

Being aggrieved, respondents No.1 to 3 herein preferred appeal, which, after hearing, was accepted vide impugned judgment and decree dated 25.05.2017 by the First Appellate Court. Resultantly, the appellant-plaintiff was non-suited by dismissing his suit.

Learned counsel for the appellant contends that the First Appellate Court has wrongly and illegally held that the instant suit of the appellant-plaintiff was not maintainable being barred under Order 2 Rules 2 and 3 CPC without appreciating the fact that earlier suit of the appellant-plaintiff was for declaration of his ownership on the basis of his adverse possession, whereas the instant suit was for permanent injunction to restrain the respondents from interfering into his peaceful possession. The cause of action of both the suits was also different. In the instant case, the cause of action had arisen to the appellant on 16.05.2012, whereas the earlier suit of the appellant-plaintiff had already been dismissed on 30.11.2011. From the documentary as well as oral evidence led by the appellant-plaintiff, his possession over the suit property was well-proved on the record, therefore, the First Appellate Court ought not to have disturbed the findings of the trial Court.

Having given thoughtful consideration to the submissions made

by learned counsel for the appellant, I find the instant appeal completely

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devoid of any merit for the reasons to follow.

No question of law muchless substantial has been raised in this Regular Second Appeal, therefore, the same is not maintainable.

Undisputedly, the correction of khasra girdawri proceedings are pending before the Financial Commissioner (Revenue) after setting aside of the *ex parte* order obtained by the appellant-plaintiff from the Assistant Collector. Therefore, as on date clear-cut possession of the appellant-plaintiff over the suit land is not proved.

Earlier suit filed by the appellant-plaintiff was dismissed with a specific finding that plaintiff could not have become owner by way of adverse possession as his father was a co-sharer in the suit land, which after his death would fall to the share of the appellant-plaintiff.

The judgment and decree Ex.D20 dismissing the earlier suit of the appellant-plaintiff was upheld by the first Appellate Court and, thus, the same attained finality as his appeal too was dismissed by the First Appellate Court vide judgment Ex.D22.

Partition proceedings are already going on between the parties as such the entire issue relating to the share of the each coparcener and their inter-se relations would be adjudicated in those proceedings. The appellant-plaintiff would be delivered the possession of the portion which would fall to his share in those proceedings.

As on date there is no document in favour of the appellant-plaintiff to prove his possession on any specific portion of the suit land except *ex parte* order of Assistant Collector, which too, as discussed above, has already been set aside and the matter is pending before the Financial

Commissioner (Revenue).

It had come in evidence that the appellant-plaintiff was

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permanent resident of Delhi. In his cross-examination, when he was asked as on which khasra number, he was in possession, he expressed his inability.

In view of discussion made above, the finding of the First Appellate Court to the effect that the appellant-plaintiff failed to justify as to how he was cultivating the suit land and in what status, is liable to be affirmed. Similarly, the finding of the First appellate Court that the suit is barred under Order 2 Rules 2 and 3 CPC is also liable to be affirmed.

I have gone through the judgment of the trial Court. The same being cryptic and illegal based on surmises and conjectures has rightly been set aside by the First Appellate Court.

In view of the discussion above, this appeal being devoid of any merit is dismissed with costs.

(Ramendra Jain)
Judge

January 11, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.