

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-4267-2017 (O&M)
Date of Decision: 30.07.2018

Bhim Singh

--Appellant

Versus

Chameli (since deceased) through
L.Rs & Others.

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

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

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiff Smt. Chameli widow of Tara Chand through her L.Rs filed a suit for declaration to the effect that they are owners in possession of agricultural land total measuring 80 kanals 10 marlas and as detailed in the plaint situated in the revenue estate of Village Manheri, Tehsil & District Bhiwani and that mutation no.3154 sanctioned on 18.4.1994 in favour of defendant no.1 Bhim Singh and subsequent revenue record including all *Jamabandis* and *Khasra Girdawaris* on the basis of said mutation no.3154 as also sale deed no.6298 dated 8.9.2006 executed by defendant no.1 Bhim Singh in favour of defendants no.2 to 4 namely Ved Parkash, Sat Parkash and Sunil Kumar registered on 8.9.2006 are null, void, based on fraud and misrepresentation and were not binding on the rights of the plaintiffs. Further relief of injunction was sought restraining the defendants from interfering into the peaceful, actual and cultivating possession of the plaintiff over the suit land. Suit was dismissed by the Trial Court vide order dated 22.5.2014 and the counter claim on behalf of the defendants to the extent that they were in possession of 57 kanals 9 marlas of suit land and the plaintiffs are restrained from creating any disturbance in possession thereof,

was allowed.

Civil appeal having been preferred, the learned Additional District Judge, Bhiwani in terms of judgement dated 3.2.2017 has set aside the judgement of the Trial Court and the suit filed by the plaintiff has been decreed.

Resultantly, defendant Bhim Singh is in second appeal before this Court.

Mr. Anurag Jain, counsel representing the appellant, at the very outset, submits that as regards ownership of the suit property he would not have much to argue. However, with regard to possession thereof it is contended that the Lower Appellate Court has erred in overlooking the evidence adduced on record and which would reflect that the appellant had been shown in cultivating possession of the land in question. It is argued that in the *Jamabandi* for the year 2001-2002 Ex. P-5 as well as *Khasra Girdwari* Ex.P-8 crop *Kharif* 2002 to *Rabi* 2006 appellant was recorded in possession of 80 kanals 10 marlas and such documents carried presumption of truth being documents of record of rights. It is contended that the entry of possession in such records could not have been brushed aside by the Lower Appellate Court. Reliance has also been placed upon the judgements of the Apex Court in ***Mehar Chand Das Vs. Lal Babu Siddique and others, 2007(2) R.C.R (Civil) 628*** and ***Vinay Krishna Vs. Keshav Chandra and others, AIR 1993 S.C, 957*** to contend that if a plaintiff is not in possession, then, a suit for mere declaration would not be maintainable.

Having heard counsel for the appellant at length and having perused the case paper book, I am of the considered view that the instant appeal is without merit and deserves to be dismissed.

A brief factual matrix and which is not in dispute may be noticed. Mangal Singh son of Sheo Bax was owner in possession of land measuring 82 kanals 13 marlas as per *Jamabandi* for the year 1986-1987 Ex. P-2. In his life time he sold land measuring 1 kanal 1 marla and as such at the time of his death he remained owner in possession of 81 kanals 12 marlas i.e. the suit land whose mutation of inheritance Ex. P-1 was entered and sanctioned in the name of his widow Amar Bai as he had died issueless.

Counsel does not controvert that upon death of Amar Bai, appellant herein Bhim Singh had filed civil suit no.840 of 1991 titled as “Bhim Singh Vs. Phoolpati and others” and wherein he had sought a declaratory decree of ownership over the suit land on the basis of a Will dated 16.6.1990. The suit was dismissed vide judgement and decree dated 11.5.1998 by the then Civil Judge (Jr. Divn.), Bhiwani and findings were returned that after the death of Amar Bai the property was inherited by Tara Chand and since Tara Chand died during the pendency of the suit, hence, his wife Chameli Devi was entitled to inherit the suit land. Bhim Singh (appellant herein) filed a civil appeal against the judgement and decree dated 11.5.1998 passed by the Trial Court but the same was dismissed on 29.11.2001 by the District Judge, Bhiwani. Even the Regular Second Appeal preferred by Bhim Singh was dismissed by this Court on 24.9.2004. The judgements passed by the Trial Court, Lower Appellate Court and this Court in Regular Second Appeal were duly placed on record and exhibited as Ex.P-11 to P-14.

It would be apposite to take note that in the previous round of litigation Bhim Singh/present appellant had also sought relief of permanent injunction to restrain Phoolpati, Chameli Devi and others from alienating

the suit land in any manner and from creating any interference in his possession over the suit land. Even such relief had been denied and the findings pertaining to possession were also returned against Bhim Singh and which have since attained finality.

Even though, counsel would lay much stress on *Jamabandi* Ex.P-5 and *Khasra Girdawari* Ex.P-8 which were subsequent to the judgement and decree passed by the Trial Court against Bhim Singh and would urge that the same reflected possession of the appellant over the suit property, yet, the Lower Appellate Court has rightfully rejected such plea by observing that no evidence had been adduced on record to reflect as to on what basis he had been delivered physical and cultivating possession of the suit land after death of Amar Bai. It has been conceded by the counsel that *Nehri Girdawari* or *Abyana Receipt* had not been produced inspite of the ownership being in favour of the plaintiffs/respondents.

Under such circumstances there would have no warrant for interference in the impugned judgement dated 3.2.2017 passed by the Lower Appellate Court and whereby the judgement of the Trial Court has been set aside and suit of the plaintiffs/respondents has been decreed.

Even the reliance placed by counsel upon the judgements in ***Mehar Chand Das*** and ***Vinay Krishna's*** cases (supra), is wholly misplaced and would have no applicability to the facts of the present case. Suffice it to observe that if in a given set of facts and circumstances the plaintiff filed a suit showing himself to be in possession, then a suit for mere declaration would be maintainable. In the present case findings with regard to possession of the suit land had been recorded by the competent court in the previous *lis* between the parties and such findings had attained finality.

The instant appeal is without merit. No question of law much less a substantial question of law is involved in the present appeal.

The appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

30.07.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No