

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4350 of 2017(O&M)

Date of Decision:20.9.2018

Amarjit Kaur

---Appellant

vs.

Jasbir Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Pritam Singh Saini, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for permanent injunction restraining the defendant-appellant from forcibly interfering in peaceful possession of the respondents-plaintiffs as tenant over land measuring 6 kanal 13 marlas, situated in revenue estate of village Ganeshpur, Tehsil Naraingarh, District Ambala, detailed in head note of the plaint, was decreed by the trial court on 27.4.2016 and appeal preferred by unsuccessful appellant/defendant did not find favour with the Court of Additional District Judge, Ambala.

The respondents-plaintiffs, sons of late Jaspal Singh staked their claim for grant of permanent injunction on the premise that the plaintiffs and their predecessors-in-interest are in cultivating possession of the suit land for the past many years in the capacity of being tenants. The

previous owners of land sold it to defendant-appellant in the year 2005. She filed an application in the year 2006 for correction of khasra girdawari in her favour. The spot was inspected by A.C.IInd Grade, Naraingarh and vide order dated 27.10.2008, application of the appellant was dismissed since the respondents-plaintiffs were found to be in cultivating possession of the suit land. Appellant has again moved an application before the A.C.IInd Grade, Shazadpur-defendant No. 2 for correction of khasra girdawari and they in collusion with each other are trying to change the khasra girdawari.

Defendant No. 1-appellant filed the written statement and raised preliminary objections inter alia that the suit is not maintainable; plaintiffs have no locus standi to file the suit; suit is bad for non-joinder of necessary parties; lack of cause of action; estoppel etc. It is averred that appellant purchased the suit land vide registered sale deed from its previous owners who were in cultivating possession of suit land and possession was delivered to her at the time of purchase. The previous owners were declared to be owners in possession of suit land vide judgment and decree dated 23.7.2003. She has denied that the respondents-plaintiffs or their predecessors-in-interest had ever remained in possession of suit land. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial court framed issues, reproduced in para 4 of the judgment, permitted the parties to adduce evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the trial court accepted plea of the respondents-plaintiffs that they are in possession of the suit land and are entitled to

protect their possession except in due course of law.

As has been noticed hereinbefore, the judgment and decree passed by the trial court were affirmed in appeal without variance.

Counsel for the appellant has submitted that even if the respondents-plaintiffs are in possession of the suit land, there is nothing on record suggestive of the fact that they have ever paid any rent or *batai* etc. to previous owners or to the appellant after she became owner of suit land in the year 2005, sufficient to falsify their plea that they have tenancy rights in the suit land and entitle to get injunction against the true owner. It is further argued that the respondents-plaintiffs, at best, can be termed as trespassers of the suit land, therefore, they are not entitle to equitable and discretionary relief of injunction against the true owner. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Premji Ratansey Shah vs. Union of India 1995(3) R.R.R. 11**. Further reference has been made to judgments of this Court **Dharampal vs. Smt. Dhanni Devi and other 2011(5) RCR (Civil) 502**, **Jarnail Singh (deceased) vs. The Dialpur Bhaika Co-operative Agricultural Service Society Limited Dialpur Bhaika, 1983 RLR 167**, **Natha Singh vs. Bikkar Singh 1986 R.R.R. 508** and **Jit Singh vs. Bhupinder Pal Kaur Major 1993(1) R.R.R. 225**.

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

Counsel for the appellant has not disputed that in the revenue documents i.e. jamabandis and khasra girdawari, the predecessor-in-interest of the respondents has been recorded to be in possession of the suit land. It

is also an undisputed fact that the present appellant filed an application for correction of khasra girdawari by claiming herself to be in possession of suit land on the basis of sale deed executed in the year 2005 but the same was dismissed by the revenue authorities vide order dated 27.10.2008 as it was recorded that on spot inspection, respondents-plaintiffs were found to be in cultivating possession of the suit land. The consistent revenue entries in favour of the respondents or their predecessor-in-interest qua possession of the suit land coupled with that application filed by the appellant for correction of khasra girdawari was dismissed vide order dated 27.10.2008 is sufficient to falsify and belie plea of the appellant that she was delivered possession of suit land by her vendors on the basis of sale deed of the year 2005. She has also failed to adduce satisfactory much less convincing evidence that her vendors were in possession of suit land in order to enable them to deliver its possession in favour of the appellant. The mere fact that the respondents-plaintiffs have not been able to prove that they had paid any rent to the previous owners or the appellant is not sufficient to negate their plea with regard to their possession of suit land. It further appears to the court that since the appellant purchased the suit land in the year 2005 and she has been consistently making efforts for correction of khasra girdawai, apprehension expressed by the respondents-plaintiffs that they might be dispossessed from the suit land forcibly and illegally is well founded.

Hon'ble the Supreme Court in **Rame Gowda (Dead) by Lrs vs. Mr. Varadappa Naidu (Dead) by Lrs. and another 2004(1) RCR (Civil) 519** decided by a Larger Bench viz-a-viz the decision in **Premji Ratansey Shah's case (supra)** relied upon by the appellant, has held that injunction

against true owner and in favour of trespasser in settled possession can be granted, if the true owner wants to dispossess the possessor in settled possession by use of excessive force though he may take possession peacefully if possible. In this view of the matter, the appellant cannot derive any advantage to her contention from the judgment in **Premji Ratansey Shah's case (supra)**. The other judgments relied upon by counsel for the appellant do not deal with the controversy as to whether a person in settled possession can or can not get injunction against the true owner against forcible dispossession. That being so, the judgments of this Court cited by counsel has no bearing for determination of the question involved in the present appeal. In this view of the matter, I do not find an error much less perversity in the consistent findings recorded by the courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

20.9.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No