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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-400-2018 (O&M)

Date of decision : 02.05.2018

Gopi Ram and others

... Appellant(s)

Versus

Rameshwar Lal

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Peeush Gagneja, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree of the lower Appellate Court dated 18.09.2017, whereby the suit of the respondent-plaintiff for permanent injunction has been decreed, which was vide judgment and decree dated 27.04.2015 dismissed by the trial Court.

As per the facts which emanates from the pleadings of the parties to the *lis*, are that respondent-plaintiff instituted the suit for permanent injunction seeking restraint order against the defendants/appellants from interfering into the peaceful possession of the plaintiff over the land measuring 4 kanals 5 marals comprised in rect. No.111 killa No.11/2/2 (0-5), 20/1/1 (0-4) rect. No.112 killa No.17/2 (1-14), 24/1 (1-19), khewat No.316/297 khatoni no.826 and rect No.111 killa No.11/1/2 (0-3) khewat no.20/21 min khatoni no.29 vide jamabandi for the

year 2007-08 of Village Dharampura, H.B. No.82 Tehsil Abohar, on the premise that the defendants were resourceful persons and intended to interfere into peaceful possession, therefore, sought injunction qua forcible dispossession..

The aforementioned suit was contested by the appellants-defendants by taking plea that father of the defendant Nos.1 and 2, Sh. Nand Ram was tenant at will under Sh. Om Parkash, Krishan Kumar etc. sons of Sh. Lal Chand over the land Rect. No.112 Killa No.14, 15, 16/1, 17/1 Rect. No.111 Killa No.11/1/1, 11/2/1, 20/1/2, 11/1/2, 11/2/2, 20/1/1 along with other land and since prior to 1947-48 had been in cultivating possession over the said suit land. A compromise was effected between Sh. Nand Ram and Sh. Om Parkash etc., land owner, vide which some part of land was left in favour of Sh. Om Parkash etc. land owner out of tenanted land including the suit land and remaining land was purchased by Sh. Nand Ram under Section 15 of Punjab Land Reforms Act. Om Parkash sold the land to the plaintiff with a condition that path provided to the defendants comprised in khasra No.568 would remain intact, therefore, the suit was wholly without any cause of action and prayed for dismissal of the suit.

The trial Court framed as many as six issues including the relief.

The plaintiff in support of his case examined himself as PW-1, Rajinder Kumar as PW2, Ram Lal as PW-3 and brought on record the revenue record (Ex.P1 and Ex.P2), whereas the defendant examined Om Parkash as DW-1, Gopi Ram as DW-2, Jagdish Chander as DW-3 and brought on record the document Ex.D1 to Ex.D3 and Mark A.

The trial Court on the basis of the evidence brought on record did not agree with the contentions of the plaintiff and dismissed the suit on the premise that the defendants had proved on record that they were using the suit property to approach their field comprised in khasra No.568 and if they were restrained from using the suit property then definitely they would not be able to approach their properties. The aforementioned judgment and decree was assailed before the lower Appellate Court and the lower Appellate Court reversed the findings by decreeing the suit.

Learned counsel appearing on behalf of the appellants-defendants submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law, for, the impugned judgment and decree is not sustainable as it prevented the passage of the appellants-defendant to their fields consisting of Rect. No.112 Killa No.14, 15, 16/1, 17/1 Rect. No.111 Killa No.11/1/1, 11/2/1, 20/1/2, 11/1/2, 11/2/2, 20/1/1. The findings of the lower Appellate Court is against the law and fact, for, the witnesses of the plaintiff admitted that the defendants/appellants had been using the suit land, as passage, to approach their fields. DW-1 Om Parkash had also proved the existence of the right (easement in favour of the defendant) i.e. using the suit land as passage to approach their agricultural land. All these factors have not been taken into consideration by the lower Appellate Court, therefore, there is a gross illegality and perversity, much less, misinterpretation.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gagneja, for, the lower Appellate Court being the last

Court of fact and law has exercised the powers vested under Section 96 of CPC as on examination of jamabandi for the year 1972-73 (Ex.D2), it found that the land comprised in Rect. No.111 Killa No.11/1/1, 11/2/1, 20/1/2 in column No.5, was depicted to be a Gair Mausī through Nand Ram son of Jisukh, even the jamabandi Ex.D3 had also not been noticed by the trial Court, wherein possession of Nand Ram as Gair Marusi over the land was in Rect.111/1 min (3-0), 10 (8-0) and 11/1 (3-2). The site plan (Ex.D1) proved on record that defendants had approach to their land with regard to the sanctioned passage. The injunction sought by the respondent-plaintiff was in respect of rect. No.111 killa No.11/2/2 (0-5), 20/1/1 (0-4) rect. No.112 killa No.17/2 (1-14), 24/1 (1-19), khewat No.316/297 khatoni no.826 and rect No.111 killa No.11/1/2 (0-3) khewat no.20/21 min khatoni no.29. The lower Appellate Court granted the injunction viz-a-viz the aforementioned khasra numbers. In such manner, it cannot be said that lower Appellate Court has committed illegality and perversity, whereby the appellants-defendants have been prevented to approach their agricultural land. DW-1 Om Parkash clearly admitted in cross-examination that the plaintiff is the owner in possession of the land in dispute and also planted *Kinnow* orchard thereon. The ownership and possession has been proved to the hilt. All these factors have been examined by the lower Appellate Court.

I cannot also remain unmindful that the defendants had come out with a plea that there was a small bridge constructed on the watercourse/'*khal*' of the suit land. The aforementioned evidence was beyond the pleadings.

As an upshot of my observations, the argument of Mr. Gagneja

is not able to make out the case within the realm of illegality and perversity or to form a different opinion than the one arrived at by the Lower Appellate Court.

No ground is made out for interference, much less, no substantial question of law arises for determination.

The present regular second appeal is dismissed.

02.05.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**