

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-4793-2018 (O&M)
Date of Decision: 20.8.2018

Gurjatinder Singh

--Appellant

Versus

Hardeep Inder Singh

--Respondent

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

Present:- Mr. Akshay Kumar Goel, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiff Hardeep Inder Singh filed a suit against his brother namely Gurjatinder Singh/defendant for possession of the suit property measuring 24 kanals 3 marlas situated at Village Kandola as well as permanent injunction and mesne profits. Suit of the plaintiff was decreed by the Trial Court on 28.2.2017. Civil appeal preferred by the defendant has been dismissed vide judgement dated 5.3.2018 passed by learned Additional District Judge, Rup Nagar.

Resultantly, defendant-appellant is in second appeal before this Court.

Briefly, it may be noticed that the suit of the plaintiff-respondent was instituted on the pleadings that he was owner of the suit property, whereas his brother/defendant was in illegal and unauthorized possession of the same and without payment of any amount for use and occupation. Defendant-appellant contested the suit taking a stand that he was in cultivating possession of the suit property and that his brother had delivered the possession of the suit property upon having received Rs.60,000/- as full and final payment of such property in the presence of respective wives of the parties.

As has been noticed herein above, suit of the plaintiff-respondent stands decreed and the judgement and decree of the Trial Court stands affirmed by the Lower Appellate Court as well.

Learned counsel representing the appellant has argued that the courts below have erred in decreeing the suit without appreciating documentary as well as oral evidence in the true perspective. The plaintiff-respondent had failed to mention the date, month and year when the appellant herein had allegedly entered into the illegal and unauthorized possession of the suit property. Further urged that the courts below have brushed aside the statement of DW-3 Smt. Jagdish Kaur Dhillon, sister of the parties and who had stated that a family settlement had been arrived at and that the appellant herein had paid Rs.60,000/- to the plaintiff-respondent and who in turn had promised to execute the sale deed with respect to the suit property in favour of the appellant. It is suggested that under such circumstances the possession of the appellant over the suit property would have to be construed as lawful and permissive.

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

The courts below have returned a concurrent finding of fact as regards the plaintiff-respondent being owner of the suit property. Such finding is based upon evidence adduced on record in the shape of revenue entries Ex.P-1, Ex.P-2, Ex.P-8, Ex.P-9, Ex.P-11 to Ex.P-13. The entries contained in the revenue record would carry a presumption of truth unless rebutted. In any case the appellant herein has not disputed the ownership of the plaintiff-respondent as regards the suit property.

Case projected on behalf of the appellant is that he had paid Rs.60,000/- to the plaintiff-respondent at the time of delivery of possession of the suit property in his favour. Further stand of the appellant was that the plaintiff-respondent had promised to get the sale deed executed in his favour. Courts below have noticed that the appellant had not disclosed any details as regards the place and date of such transaction. Appellant claims himself to be in possession of the suit property since the year 1986. Even though, DW-3 Smt. Jagdish Kaur Dhillon, sister of the parties has deposed that a payment of Rs.60,000/- had been made over to the plaintiff-respondent but even such oral evidence would not enure to the benefit of the appellant as it was his own case that he had taken possession in pursuance to a family settlement in November, 1986 but in the same breath has admitted that he has not filed any suit for specific performance since then and till the date of institution of the suit in pursuance to the settlement allegedly arrived at between the parties.

Furthermore, the appellant even though, claiming to be in possession of the suit property since the year 1986 has not contested the claim of the plaintiff-respondent by claiming himself to be in adverse and hostile possession of the suit property. The courts below have, under such circumstances, rightfully held that the possession of the appellant over the suit property was unlawful and illegal and he was bound to deliver possession thereof to the plaintiff-respondent.

Concededly, the appellant has been enjoying the fruits of the suit property even prior to the date of filing of the suit. Under Order 20 Rule 12 CPC, mesne profits are to be granted from the date of institution of the suit till delivery of possession to the rightful owner. Suit had been

instituted by the plaintiff-respondent in the year 2010. As such, awarding of Rs.3 lakhs as mesne profits for the use and occupation of the suit property by the appellant herein does not call for any interference.

The judgements passed by the courts below are well reasoned and based on due appreciation of evidence.

There is no merit in the appeal and the same is dismissed.

Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

20.8.2018

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