

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 6465 of 2017(O&M)

Date of Decision:27.7.2018

Makhan Singh

---Appellant

vs.

Sulakhan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. V.K.Sandhir, Advocate
for the appellant

Rekha Mittal, J.

CM No. 16690-C of 2017

Heard.

Allowed as prayed for.

RSA No. 6465 of 2017(O&M)

Challenge in the present appeal has been directed against consistent findings recorded by the courts whereby suit for permanent injunction restraining the appellant-defendant from interfering into peaceful possession of the respondents-plaintiffs and/or dispossessing them from land measuring 10 kanal 18 marlas, detailed in head note of the plaint, has been decreed by the trial court vide judgment and decree dated 8.2.2016 and

the appeal preferred by unsuccessful defendant/appellant was dismissed thereby affirming findings of the trial court without any variance.

The respondents-plaintiffs claimed their possession over suit land since the year 1965. It is averred that suit land was under tenancy of Amar Singh, predecessor-in-interest of the plaintiffs who died in the year 1997. After death of Amar Singh, tenancy rights have been inherited by plaintiffs No. 1 to 3 sons of Amar Singh and Gurvinder Singh grand son of said Amar Singh. Amar Singh got installed tube well connection bearing Account No. 1308 AD in the suit land, used for cultivation purpose. He also constructed two residential houses in two kanals area out of suit land and installed connection bearing No. TK 43/0912-H in one of the houses.

The appellant-defendant denied claim of the respondents to be in cultivating possession of suit land much less since 1965. It is averred that the appellant mortgaged 1/4th share of suit land to Mukhtiar Singh for a period of two years vide registered mortgage deed dated 18.5.2010 and the mortgagee is in cultivating possession of khasra Nos. 108(0-17), 10/8/2 (1-0). Karam Singh, another co-sharer mortgaged with possession land in favour of Gulzar Singh and Lakhwinder Singh vide mortgage deed dated 30.3.1999 for Rs. 20,000/-.

After 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 suit land and cannot be dispossessed except in due course of law. As has been noticed hereinbefore, appeal preferred by unsuccessful appellant-defendant did not find favour with the Additional District Judge, Amritsar.

Counsel for the appellant would argue that as the appellant is a non-resident Indian, taking advantage of his absence from India, respondents-plaintiffs are successful in getting prepared wrong revenue record reflecting them to be in possession of land in question on payment of *batai* etc. It is further argued that as the appellant is residing abroad, where is the question of respondents-plaintiffs giving a part of produce to the appellant. Further argued that in proceedings under Order 39 Rule 2-A of the Code of Civil Procedure (in short “the Code”) (Ex. DX/1), one of the witnesses of the respondents admitted that they are not in possession of the suit property. In addition, it is argued that in the year 2015, Assistant Collector Ist Grade, Amritsar vide order dated 6.4.2015 (Ex. D3) has recorded that Gulzar Singh mortgagee is infact in possession of the suit land, sufficient to rebut the entries in jamabandis and khasra girdawaris.

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

Before advertng to the submissions made by counsel for the appellant, it is pertinent to note that in the regular second appeal, it is not open for the court to re-appreciate the evidence to record a finding different from what has been consistently held by the courts. Equally settled is that regular second appeal can be admitted for hearing if the judgment(s) suffer from perversity or raise a question of law.

In the case at hand, there are revenue entries wherein it has been consistently recorded that suit land is in possession of the respondents/plaintiffs as *gair marusi*. Jamabandi for the year 2005-06 also records the factum of payment of rent by way of *batai*, reflected in column

No. 9 thereof. Counsel has not disputed that in the revenue documents produced on record previously Amar Singh and thereafter the respondents have been recorded to be in possession of suit land. As the appellant is not residing in India, he cannot claim that he is in actual possession of the suit land. The trial court in para 31 of the judgment has adverted to order dated 6.4.2015 (Ex. D3) passed by the Assistant Collector Ist Grade, Amritsar whereby the aforesaid authority has adjourned proceedings sine die in application for correction of khasra girdawari from *rabbi* 2007 to *hari* 2010 filed by Gulzar Singh and Mukhtiar Singh. In the given scenario, the appellant cannot derive any advantage to his contention from order Ex. D3 which is yet to attain finality in the proceedings for correction of khasra girdawari. So far as the statements made in the proceedings under Order 39 Rule 2-A CPC and admission by one of the witnesses of the respondents, the Court in Appeal in para 15 has rejected this contention by holding that statement of Sukhjinder Singh cannot be read against the plaintiffs-respondents because they have got no opportunity to cross examine this witness. Counsel has not disputed factual findings recorded by the courts in respect of order Ex. D3 and statement of Sukhjinder Singh. In view of the above, the appellant cannot derive any advantage to his contention from the aforesaid facts by contending that entries in the revenue record particularly jamabandis stand rebutted on the basis of document Ex. D3 and statement of Sukhjinder Singh in proceedings under Order 39 Rule 2-A CPC. In this view of the matter, I have no hesitation to hold that the appellant has failed to make out a case that findings recorded by the courts suffer from perversity much less a question of law emerges for determination in regular

second appeal.

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

(Rekha Mittal)
Judge

27.7.2018
paramjit

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