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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1532-1987 (O&M)

Date of decision : 08.03.2019

Champa (deceased) through LR's and others

... Appellants

Versus

Anand Sarup and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Umesh Aggarwal, Advocate
for the appellants.

Mr. Kabir Sarin, Advocate
for respondent Nos.7 and 8.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit for permanent injunction dismissed by the trial Court, has been decreed and the appellants-defendants have been restrained from interference and dispossession.

The respondents-plaintiffs sought the injunction on the premise that they were owner in possession of the agricultural land measuring 42 kanals 8 marlas situated in Village Pingore, Tehsil Palwal, District Faridabad and was ordered to be ejected by the Court of Assistant Collector in a proceedings of 1974, against the defendants, decided in 1975. The appeal was also dismissed on 14.06.1975. In execution of the decree of ejectment of 1975, obtained the possession after depositing the compensation of the standing crops, but the defendants extended the threats

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of interference and dispossession, therefore, cause of action arose to file the suit.

The defendants objected the suit and denied the possession of the plaintiff. It was explained that the land was declared surplus, thus, vested in the State Government being surplus, therefore, the order of ejectment and subsequent proceedings were nullity.

Since the parties were at variance, the trial Court framed the following issues:-

1. Whether the plaintiffs are owners in possession of the suit land? OPD

Whether the suit land was surplus land of the plaintiffs and it vested in the State of Haryana? OPD

3. Whether the suit is bad for misjoinder of parties? OPD

4. Whether the civil court has no jurisdiction to try this suit? OPD

5. Whether the impugned order of A.C. 1st Grade Palwal is illegal, null and void? OPD

6. Whether the defendants are entitled to special costs? OPD

7. Relief.

8. Issues No.1, 2 and 5 are interconnected and can be taken up together and accordingly discussed together.

On the basis of the evidence brought on record, the trial Court dismissed the suit, but the lower Appellate Court being the last Court of fact and law has reversed the findings of the trial Court, in essence, the suit has been decreed.

Mr. Umesh Aggarwal, learned counsel appearing on behalf of the appellant submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law, for, the plaintiff failed to prove

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their possession. The findings arrived at by the trial Court with regard to the declaration of the land as surplus have not been controverted by the plaintiffs, therefore, there is an abdication. No evidence with regard to the possession has been placed on record, therefore, injunction could not have been granted.

Mr. Kabir Sarin, learned counsel appearing on behalf of respondent Nos.7 and 8 supported the judgment and decree of the lower Appellate Court as there is no gross illegality and perversity, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Aggarwal, for the simple reason that the testimony of DW-3 Patwari established that the possession was of the plaintiffs. It is a settled law that a person, who is in long and settled possession, cannot be dispossessed except in due course of law. The defendants could not, without any counter-claim or the separate proceedings, assert the right with regard to vesting of the land to the State Government, having been declared as surplus. Ejectment order of 1975 had attained finality and the possession was taken by the plaintiffs. The aforementioned fact was not controverted. The provisions of Punjab Security of Land Tenures Act, 1953 and the Punjab Land Reforms Act, 1972, provide the determination of a permissible area at the hands of the tenant. If at all, the land had been declared as surplus, the defendants would have been able to place on record certain material regarding determination of share and allotment, which would have been under the utilization of the surplus land. In my view, the injunction granted by the lower Appellate

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Court being the last Court of fact and law, was most innocuous.

I cannot remain unmindful of the fact that this Court vide order dated 03.06.1988 had also vacated the *ex parte ad interim* injunction. For the sake of brevity, order dated 03.06.1988 reads as under:-

"This application has been filed to vacate the ex parte ad interim injunction restraining the respondents from interfering with the possession of the appellants. The finding recorded by the lower Appellate Court is that the plaintiffs-respondents are in possession and the defendants-appellants have been restrained from interfering in their possession. In these circumstances, no ad interim injunction in favour of the appellants can be granted so as to nullify the decree of the lower Appellate Court. The ex parte ad interim injunction is accordingly vacated."

In view of what has been noticed above, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination. No ground is made out for interference. Accordingly, the present regular second appeal is dismissed.

08.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**