

RSA-1782-1992 (O&M)

**1986 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-1782-1992 (O&M)
Date of decision : 01.04.2019**

Moola and others

... Appellants

Versus

Subedar Ram Chander

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate for the appellants.

None for the respondent.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the respondent-plaintiff simpliciter for non-interference and forcible possession, though dismissed by the trial Court, has been decreed.

The plaintiff alleged that he was owner in possession of the agricultural land bearing Rect. No.16, Killa Nos.10/2 (6-0), 10/1 (2-0), 1/1 (4-0), Rect. No.9, Killa Nos.21/2 (5-0), 16/1/2 (2-0), as non-occupancy tenant under the Dholdaran, on the payment of ₹100/- as rent and had been in cultivating possession of the suit. However, the defendants intended to dispossess the plaintiff, therefore, was constrained to file the suit.

The defendants, in their written statement, challenged the *locus standi* of the plaintiff and raised the objection as there was no cause of action, much less, disputed the possession of the plaintiff over the suit property as well as status of occupant tenant. It was alleged that their ancestors had given the land measuring 3 bigha 11 biswas of Village Dhorka on Dholi to Behari and Maha Singh, in equal shares with terms and

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conditions that the Dholidars shall render religious services to the defendants as *Prohits* and after the death of Dholidars, their male descendant shall also render the religious services to the owners of the land, on default, Dholidhars stood extinguished. The Dholidars had already left the village after abandoning the Dholi land in favour of the defendants.

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

- 1. Whether the plaintiff is in possession and entitled to relief of injunction? OPP*
- 2. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 3. Whether the suit is not maintainable? OPD*
- 4. Whether the suit is barred u/s 10 CPC ? OPD*
- 5. Whether the plaintiff has no cause of action to file the suit ? OPD*
- 6. Relief.*

In order to prove the pleadings, the plaintiff examined one himself as PW1 and brought on record many documents. On the other hand, the defendants examined one witness and tendered in evidence many documents.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellants-defendants submitted that the pleaded case of the defendants was that they were in possession and the entry to the contrary was factual wrong, therefore, khasra girdawaris could not have been looked into, by the lower Appellate Court. The lower Appellate Court has committed illegality and perversity holding the plaintiff to be in possession as the plaintiff miserably failed to prove the possession.

There is no representation on behalf of the respondents.

The appeal is of the year 1992, I proceed to decide the appeal

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on merits.

I have heard learned counsel for the appellant, appraised the paper book as well as the records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Goel, for the simple reason that khasra girdawari and jamabandi established the possession of the plaintiff. Even if, entry was wrong, it was obligatory upon the defendants to get the same corrected. A person, who is in long and settled possession, in view of the decision rendered by Hon'ble the Supreme Court in **Rame Gowda (dead) by LRs V/s M. Varadappa Naidu (dead) by LRs and another 2004(1) SCC 769** reiterated by the recent judgment passed in **Civil Appeal No.4527 of 2009** titled as **Poona Ram Vs. Moti Ram (D) through LRs and others**, decided on 29.01.2019, cannot be dispossessed.

This is what has been held by the lower Appellate Court. It was a simpliciter injunction. If at all, there was some truth in the assertion of the defendants qua the ownership, they had independent remedy.

Keeping in view the aforementioned facts, 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. Resultantly, the second appeal is dismissed.

01.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**