

**RSA-192-1989 (O&M)**

**508**

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

**RSA-192-1989 (O&M)**

**Date of decision : 12.04.2019**

Mahender Singh

... Appellant

Versus

Ram Piari

... Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Ashish Kapoor, Advocate  
for the appellant.

Mr. Akshay Bhan, Senior Advocate with  
Mr. Santosh Sharma, Advocate  
for the respondent.

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**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 for permanent injunction qua forcible interference and dispossession in respect of land bearing Khasra No.1378/2 min measuring 4 biswas, dismissed by the trial Court, has been decreed.

The plaintiff sought the injunction against the defendant on the premise that he had been in continuous possession of the land for the last 17 years. Previously, there was litigation between the plaintiff and the father and brothers of the defendant, filed the suit, in the year 1978 for permanent injunction, which was decreed. The appeal was also dismissed. The other son Mahender i.e. defendant was trying to interfere.

The defendant categorically denied the possession of the

**RSA-192-1989 (O&M)**

plaintiff. The defendant was proprietor holding shamlat rights in the revenue estate of Rohtak and purchased the land in question including the rights in the shamlat land from Bishan Sarup, vide registered sale deed dated 12.02.1966 and had constructed a Godown on a portion of the disputed land some 7 to 8 years back.

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

- 1. Whether the plaintiff is in possession of the suit land as alleged? OPP*
- 2. Whether entries of possession in khasra girdawari in favour of the plaintiff is the result of fraud as alleged on the part of husband of the plaintiff as Patwari? If so its effect? OPD*
- 3. Whether the defendant purchased land including rights in shamlat land from Bishan Sarup and others vide registered sale deed dated 12.02.1966 and got possession of the suit land in 1966 and has been in possession thereof since then as alleged? OPD*
- 4. Relief.*

Both the parties led extensive evidence, in support of their respective cases.

The trial Court discarded the khasra girdawaris on the premise that the husband of the plaintiff was Patwari and the possibility of managing the entries cannot be ruled out. However, the lower Appellate Court reversed the findings by noticing the khasra girdawaris and also on the ground that in the previous litigation, the plaintiff was found to be in possession.

Mr. Ashish Kapoor, learned counsel appearing on behalf of the appellant submitted that the judgment and decree of the lower Appellate

**RSA-192-1989 (O&M)**

Court is not sustainable in the eyes of law as the plaintiff, in injunction suit, even the title is not in dispute, failed to establish on record the long and settled possession. The entries were not correct and it was also regarding shamlat deh, where every proprietor had share. The simpliciter suit for injunction, in the absence of partition, was not maintainable, thus, urges this Court for setting aside the judgment and decree, under challenge.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, learned counsel for the respondent submitted that assuming for the arguments sake that the share was proprietary, but the exclusive possession was of the plaintiff, which has been reflected through khasra girdawaris. If at all, the defendant was aggrieved, nothing prevented to seek the partition and cannot take the law in his own hand for extending the threat qua forcible interference, 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 the records of the Courts below and of the view that the following 'Substantial Question of Law' arises for determination:-

*Whether the respondent-plaintiff is entitled to the injunction being found to be in long and settled possession, in the absence of partition in a shamlat deh property.*

There is no force and merit in the submissions of Mr. Kapoor, for the simple reason that the trial Court had gone only in the surmises and conjectures regarding the management of the entries as the husband of the plaintiff was Patwari, but did not see the consistency of the entry, which was spanning from 1982-83, 1983-87 (Ex.PA to Ex.PC), even Ex.P2 from 1981-86 also reflected the same fact and also judgment and decree in the

**RSA-192-1989 (O&M)**

previous suit i.e. Ex.P5 and Ex.P6. The cumulative effect of the aforesaid judgment was that the injunction was against Chet Ram and his other sons. The defendant was none-else, but another son of Chet Ram, who was not a party in the previous suit. For the purpose of granting the injunction, on a ground of long and settled possession, the defendant introduced the other son, who was not a party in the previous suit. Such a ploy cannot be triggered at the instance of the affected party, who was not successful in the previous suit for injunction.

It is also a matter of fact that there is no interim order.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Kapoor, to form a different opinion than the one already arrived at by the lower Appellate Court, much less, no ground is made out for interference. The Substantial Question of Law, as framed above, is answered in favour of the respondent-plaintiff and against the appellant-defendant.

Resultantly, the second appeal is dismissed.

**12.04.2019**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

Whether speaking/reasoned    **Yes/ No**

Whether Reportable            **Yes/ No**