

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

206

RSA-478-1997 (O&M)
Date of Decision : 16.07.2019

Hari Ram and another

.... Appellants

Versus

Haria and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Lalit Kumar Sharma, Advocate for
Mr. Sunil Kumar Sharma, Advocate
for the appellants.

None for the respondents.

RAMENDRA JAIN, J. (ORAL)

None is representing the respondents for the last several dates, despite their effective service and even after informing their counsel telephonically. Therefore, this Court is left with no option except to hear and decide this appeal on merits in the absence of the respondents.

Briefly, the ancestors of the appellant namely Rura Ram filed a suit for permanent injunction praying alternative relief of possession against the respondents qua land measuring 4 Kanals 9 Marlas comprising (hereinafter to be referred to as “the suit land”) situated in village Taunsa claiming himself to be owner in possession of the same and to restrain them from dispossessing or from interfering into his

possession over the same.

Upon notice, the respondents contested the suit. They also filed a counter claim, claiming themselves to be the owner in possession of the suit land. Trial Court after holding full-fledged trial, decreed the suit of the predecessor-in-interest of the appellants in toto, while dismissing the counter claim of the respondents vide judgment and decree dated 15.06.1994.

Being aggrieved, out of four defendants, two defendants approached the first Appellate Court for setting aside the aforesaid judgment of the trial Court and accepting their appeal by holding that the trial Court had illegally relied upon the Local Commissioner's report. The Appellate Court accepting their appeal, set aside the judgment and decree of the trial Court in favour of the appellants.

Heard.

Having given thoughtful consideration to the submissions made by learned counsel for the appellants, this Court finds the instant appeal merits acceptance for the reasons to follow.

Undisputedly, the appellants staked their claim of ownership and possession over the suit land through their predecessor-in-interest on the basis of registered sale deed dated 25.08.1986 duly proved by PW2 Amritsaria and PW4 Harnam Dass, marginal witnesses. Endorsement of the Sub Registrar on the sale deed in favour of the appellants was proved as Ex.P1/A. PW3 Karnail Singh, Kanungo Sales proved conveyance

deed (Ex.P2) dated 18.08.1986, testifying that the same was executed in favour of the predecessor-in-interest of the appellant. The said sale deed was given effect in the revenue record as was evident from Jamabandi (Ex.P-3) for the year 1982-83 and Khasra Girdawari entries (Ex.P4), showing possession of the predecessor-in-interest of the appellants over the suit land. Defendants did not lead any cogent, convincing or documentary evidence to rebut the above evidence led by the appellants. Their plea was that they had encroached some part of the suit land. On this very ground, the Appellate Court dismissed the suit of the appellants, while setting aside the judgment and decree of the trial Court in their favour holding that predecessor-in-interest of the appellant Rura Ram did not specifically mentioned in his plaint that respondents had encroached upon 27 marlas out of the suit land forcibly and since this fact was not specifically pleaded by him, therefore, in the absence of any specific pleading, decree for possession could not have been passed in his favour.

The above finding of the Appellate Court is apparently erroneous and illegal inasmuch as the predecessor-in-interest of the appellant specifically made alternative prayer for a decree of possession, in case, the respondents were found in illegal possession of the suit land or any part thereof. Appellate Court miserably failed to appreciate that the counter claim of the respondents was dismissed against which they did not file any appeal. In the absence thereof, the appeal of the respondents could not have been accepted.

In view of the discussion above, appeal is allowed, the impugned judgment of the lower Appellate Court is set aside and judgment of the trial Court is upheld.

July 16, 2019
anju

(RAMENDRA JAIN)
JUDGE

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