

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

**RSA No.1930 of 2005(O&M)
Date of Order:01.03.2019**

Devi Singh and others

..Appellants

Versus

Chandra and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Malik, Advocate,
for the appellants.

Mr. B.S.Sudan, Advocate,
for respondents no.2 to 4.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the judgments passed by the learned first appellate court decreeing the suit filed by the plaintiffs and issuing a direction to the defendants-appellants to restore possession of the suit land while reversing the judgment and decree passed by the trial court.

It is admitted position on the record that the plaintiffs do not claim any right, title or interest in the property except possessory right, whereas defendants-appellants claim to be owners in possession of the property pursuant to a decree of partition.

Learned first appellate court has held that since in the revenue record predecessors of the plaintiffs have been recorded in the cultivation column in the records of rights and that entry in the cultivation column has changed during the pendency of the suit, therefore, inference has been

drawn that the plaintiffs have been dispossessed during the pendency of the suit. However, learned first appellate court has overlooked that in the entire revenue record, the land is Banjar Qadim i.e. non-cultivable and some part thereof is being used as a 'Gitwar' which is also used for tethering cattles.

Restoration of possession is a serious matter. The learned first appellate court ought to have examined the revenue record and analyzed the evidence particularly in view of the fact that major part of the property is 'Banjar Qadim'.

Keeping in view the aforesaid facts, the judgment passed by the learned first appellate court is set aside. Learned first appellate court is requested to re-decide the appeal while taking into consideration the entire evidence which has come on record.

Parties through their counsels are directed to appear before the learned first appellate court on 20.03.2019.

March 01, 2019
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(ANIL KSHETARPAL)
JUDGE

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