

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1610 of 2009 (O&M)

Date of Order: 29.03.2019

Smt. Madalsa

..Appellant

Versus

Satish Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.L.Sharma, Advocate
for the appellant.

Mr. K.S.Dadwal, Advocate, and
Ms. Neha Jain, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is aggrieved of concluding part of the judgment passed by the learned first appellate court pointing out that last para is contrary to the findings recorded by the learned first appellate court in paragraph 17.

Paragraphs 17, 18 and 19 of the judgment passed by the learned first appellate court are extracted as under:-

17. *From the revenue record as discussed above, the only fact which is proved on file is that the plaintiff is in joint possession of the suit land along with other co-sharers and not as a tenant. However, the oral evidence led on file proves the possession of plaintiff over entire suit land and this evidence has gone unrebutted in the evidence of plaintiffs. The khasra girdwaris proved on*

file show that suit land is Gair Mumkin Taal, for which jurisdiction lies with the Civil Court for its partition. The findings of learned trial court on issue No.1, 2 and 4 are therefore, upheld.

18. *With regard to findings of learned trial court on issue no.3, the learned trial court had decided this issue in favour of plaintiff on the basis of findings on issues no.1 and 2, the relief of permanent injunction for restraining defendants from taking possession of the suit land in execution of the order of partition, passed by the Assistant Collector Ist Grade, Hoshiarpur could not be allowed to the plaintiff. There is no order passed by Assistant Collector Ist Grade, Hoshiarpur, for partition of the suit land. Only an application for partition was stated to be pending there. Even during evidence, it has nowhere come on file that any order for partition was passed by the revenue authorities for the partition of the suit land. Plaintiff is, therefore, held not entitled for the relief of permanent injunction for restraining defendants from taking possession of the suit land in execution of order of partition passed by the revenue authorities. However, the plaintiff has also sought the relief of permanent injunction, restraining the defendants from taking forcible possession of the suit land. As plaintiff has been held to be in possession of the suit land, defendants have no right to take forcible possession of*

any portion of the suit land from the plaintiff. The findings of the learned trial court on issue No.3 are partly up held to the effect that defendants are restrained from taking forcible possession of any portion of the suit land from the plaintiff. The other findings of the learned trial court on issue no.3 are, however, set aside. Findings of the learned trial court on other issues being not challenged during arguments, same are upheld.

19. *In view of discussion made above, the judgment and decree of learned trial court is modified to the extent that plaintiff has failed to prove her possession over any portion of suit land in the capacity of a tenant and she is not entitled for the relief of permanent injunction restraining defendants from taking possession of suit land in execution of partition order, if any, passed by the revenue authorities. Except for this modification, there is no merit in the appeal. Same is dismissed. The parties are left to bear their own costs. Decree sheet be drawn. Record of learned trial court be sent back. Appeal file be consigned to the record room.”*

It is apparent that the findings arrived at by the learned first appellate court is clear and specific in paragraph 17 as also repeated in paragraph 18 of the judgment that the plaintiff is in possession of the property and the defendants have no right to forcibly dispossess the plaintiff. However, in para 19, the court has even declined the relief of permanent injunction.

Learned counsel appearing for the appellant points out that Jagjit Singh was the original owner of the property and father of the plaintiff was tenant, running a firewood stall. Half share of the property was purchased by the father of the plaintiff whereas remaining half was purchased by the defendants. He submits that plaintiff after the death of her father has continued in possession.

On the other hand, learned counsel for the respondents has submitted that partition proceedings were initiated before the revenue authorities but no order was passed as the revenue court had no jurisdiction. He has further submitted that the suit for partition has been filed by the defendants, however, proceedings in the aforesaid suit has been stayed due to pendency of the appeal.

Keeping in view the aforesaid facts, the judgment passed by the learned first appellate court is modified. There shall be a decree for permanent injunction in favour of the plaintiff and against the defendants from forcible dispossession from the property in dispute.

Needless to mention that the suit for partition, if any, pending shall now proceed and sincere efforts would be made to expeditiously disposed of the same.

In view thereof, the Regular Second Appeal is disposed of accordingly.

March 29, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No