

In the High Court of Punjab and Haryana at Chandigarh

RSA- 4449 of 2010(O&M)

Date of Decision: 25.3.2019

Pritam Singh and others

---Appellants

versus

Gurbinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. B.S.Sidhu, Advocate
for the appellants
Mr. G.S.Nagra, Advocate,
for respondents No. 1 to 4
Mr. Daldeep Singh Sukerchakia, DAG, Punjab

Rekha Mittal, J.
CM No. 14664- of 2018

Prayer in this application is for impleading legal representatives of appellants No. 1, 2 and 4 (since deceased).

In view of averments made in the application supported by an affidavit of Harjeet Kaur, one of the applicants and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para Nos. 3, 4 and 5 of the application are brought on record as legal representatives appellants No. 1, 2 and 4 (since deceased)respectively, for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

Main case

Challenge in the present appeal has been directed against the judgment and decree dated 23.8.2010 passed by the District Judge, Faridkot whereby appeal preferred against the judgment and decree dated 12.2.2008

passed by the trial court in favour of the plaintiffs (appellants herein) was partly allowed and findings of the trial court on issue No. 2 with regard to their entitlement to declaration were set aside and suit of the plaintiffs qua the relief of declaration was dismissed.

The plaintiffs-appellants sought declaration that they are owners of land bearing khewat No. 116 khatauni Nos. 402 and 403 bearing khasra No. 132 (10-0) and 133(8-15), situated in the revenue estate of village Kingra, Tehsil and District Faridkot as per jamabandi for the year 1994-95 with consequential relief of permanent injunction restraining defendant No. 1, 1-A to 1-C, 2, 6 and 7 from dispossessing the plaintiffs or interfering in their peaceful possession over suit land and further restraining defendants No. 6 and 7 from allotting, auctioning and alienating the suit land or delivering its possession to defendants No. 1, 1-A to 1-C and 2 or to any other person on the premise that defendants No. 6 and 7 auctioned the suit land and predecessor-in-interest of the plaintiffs made the highest bid and purchased the suit land and deposited the sale price amounting to Rs. 3200/- in the Government Treasury on 3.1.1961. The predecessor-in-interest of the plaintiffs were put in possession of suit land as its owners and since then the predecessor-in-interest of the plaintiffs and thereafter the plaintiffs are in possession of the suit land since 3.1.1961. The respondents-defendants have no right, title or interest in the suit land. The predecessor-in-interest of plaintiffs reported the matter to Halqa Patwari regarding purchase of suit land and he made some entries in the revenue record but forefather of the plaintiffs being illiterate became satisfied that possession of the suit land has been delivered to him as owner.

The trial court decided issue No. 1 to 3, 5, 6, 8 and 9 in favour

of the plaintiffs and eventually the suit was decreed for declaration and permanent injunction, as prayed for.

As has been noticed hereinbefore, the Appellate Court partly accepted the appeal and findings of the trial court on issue No. 2, pertaining to entitlement of the plaintiffs to declaration as prayed for were set aside and suit filed by the appellants for seeking declaration qua ownership of the suit land was dismissed but with the observation that they can be dispossessed only by having recourse to law.

Counsel for the appellants would argue that suit land was evacuee property and the same vested in the Custodian Department. Defendants No. 6 and 7 auctioned the suit land which was purchased by predecessor-in-interest of the plaintiffs and he deposited the sale price of Rs. 3200/-. It is further argued that though entries were made in the revenue record in respect of possession of suit land by predecessor-in-interest of the plaintiffs and subsequently plaintiffs are recorded to in possession of suit land but due to illiteracy of predecessor-in-interest of the plaintiffs, no entry was made in the revenue record with regard to his ownership on the basis of purchase made in the year 1961 in respect whereof sale price was deposited in the Treasury on 3.1.1961.

To assail findings of the Appellate Court on the question of declaration, counsel has referred to documents Ex. P21 and P22. It is argued that as per Rapat recorded in Roznamcha Wakaiti Halqa Kingra Hadbast No. 45 Tehsil Faridkot for the year 1962-63, Jai Singh son of Man Singh is recorded to be in possession of land comprising khasra Nos. 132-133 on the basis of auction. In the khasra Girdawari Ex. P22 from 1960 onwards, there is entry regarding possession of Jai Singh in land comprising

khasra Nos. 132-133. It is argued with vehemence that trial court, on detailed consideration of materials on record, rightly answered issue No. 2 in favour of the appellants but the Appellate Court without any material irregularity much less illegality in the judgment of trial court has wrongly reversed findings on issue No. 2 and consequently dismissed the suit for declaration of ownership.

Counsel representing the respondents have supported the judgment passed by the Appellate Court with the submission that there is no material worth consideration available on record on the basis whereof the appellants can assert their right qua ownership of suit land. It is further argued that they have failed to produce any document of title nor the revenue entries recording Jai Singh their predecessor to be owner of land comprising of aforesaid khasra numbers.

I have heard counsel for the parties, perused the paper book and records.

The appellants-plaintiffs staked their claim qua ownership of suit land on the basis of alleged auction conducted by Custodian of Evacuee property, Punjab in the year 1961. Indisputably, the appellants have not produced any document regarding the proceedings of auction. The entry in Rapat Roznamcha Ex. P21 only records possession of Jai Singh in respect of khasra Nos. 132-133 by way of auction. This document, by no stretch of imagination, can substantiate plea of the appellants that Jai Singh became owner of land comprising khasra Nos. 132-133 on the basis of an auction conducted by official respondents. In this view of the matter, documents produced on record as an evidence of possession of Jai Singh or his successors-in-interest cannot be construed to accept plea of the appellants

that they are owners of suit land.

Counsel for the appellants has fairly informed that appellants never approached the official respondents for issuance of conveyance deed on the basis of alleged auction conducted in the year 1961 nor had they sought any such relief in the present suit. In this view of the matter, I find myself unable to accept contention of the appellants that the first Appellate court has faulted in any manner by reversing findings of the trial court on issue No. 2. Rather the first Appellate Court has rectified the error committed by the trial court declaring the appellants to be owner of suit land.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

25.3.2019

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No