

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

RSA No.4351 of 2019 (O&M)

Date of Decision: December 11, 2019

Paramjit

...Appellant

Versus

Man Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amandeep Singh Mann, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

CM-12211-C-2019

1. There is delay of 50 days in filing the appeal.
2. For the reasons mentioned in the application, the same is allowed and delay of 50 days in filing the appeal is condoned.

FAO-4351-2019

1. This is a regular second appeal that has been filed seeking to challenge the judgment and decree dated 25.04.2019 passed the first Appellate Court whereby, the appeal filed by the appellant-defendant No.3 (in short 'the appellant') seeking to challenge the judgment and decree dated 27.07.2016 passed by the lower court, decreeing the suit of respondent No.1-plaintiff (in short 'respondent No.1'), has been dismissed.
2. In brief, the facts of the case are that respondent No.1 herein

instituted a suit against the appellant herein as well as other defendants i.e. respondents No.2 to 4 herein, averring therein that respondent No.1 is absolute owner and in cultivating possession of the suit land bearing Khasra-Khatauni No.3 min/6 min, bearing Khasra Nos.5//1 min (7-0), 4(7-1) and Khasra No.6/16/2/2/2 (2-2) total measuring 16 kanals 3 marlas situated in village Roshanpur, H.B. No.325, Tehsil and District Ambala, on the basis of two different sale deeds bearing No.1345 dated 19.07.1995 and 8739 dated 30.12.2004. It was claimed that the appellant and other defendants have no concern with the suit land, but they want to grab the same by raising a wall thereon. It was stated that on 06.04.2012, the appellant and other defendants started digging the suit land, but their act was foiled by respondent No.1 with the help of others. Respondent No.1 claimed that the appellant and other defendants be restrained from interfering in his peaceful possession over the suit land.

3. Upon notice, the appellant and other defendants did not turn up despite service, as such, they were proceeded against ex parte on 23.04.2012. Thereafter, respondent No.2 appeared and filed an application for setting aside the ex parte order dated 23.04.2012 and the case was adjourned for filing reply to the said application. However, on 16.01.2013, none appeared for respondent No.2, which resulted in dismissal of the application in default and the case was fixed for ex parte evidence of respondent No.2.

4. In order to prove his case, respondent No.1 himself stepped into the witness box as PW3, apart from examining PW1 Ram Kumar and PW2 Virendar Kumar, who supported the case of respondent No.1. The

lower court, on appreciating the evidence on record, which gone unrebutted, decreed the suit of respondent No.1 with costs. The appellant as well as respondent No.4 herein challenged the judgment and decree of the lower court in appeal, which was also dismissed by the first Appellate Court. Now, judgments and decrees passed by both the courts below have been challenged in this appeal.

5. Counsel appearing on behalf of the appellant argues that the appellant and other defendants have a right in the suit land and they are also co-sharer in the joint khata, as such, possession of respondent No.1 over the suit land is of a co-sharer. It is contended that as respondent No.1 is not in exclusive possession of the suit property, as such, judgments and decrees passed by the courts below are liable to be set aside.

6. I have heard counsel for the appellant and have also gone through the case file.

7. In the present case, in support of his case, respondent No.1 has produced on record copy of Khasra-girdawari as Ex.P1 which shows that he is in cultivating possession over the suit land as well as copy of jamabandi for the year 2003-04 as Ex.P2 which also shows that respondent No.1 is owner of the suit land whereas, attested copy of the sale deeds Ex.PX and Ex.PY show that respondent No.1 had purchased the suit land. The mutation Nos. 214 and 234 also sanctioned in favour of respondent No.1 on the basis of said two sale deeds. From the oral as well as documentary evidence available on record, it is made out that respondent No.1 is in exclusive possession of the specific Khasra numbers, though recorded as a co-sharer in the joint khata. Under these circumstances, the appellant and

others defendants have no right to dispossess respondent No.1 from the suit land forcibly or illegally, except in due course of law. The courts below have rightly allowed the relief of permanent injunction in favour of respondent No.1.

8. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-defendant, which has no merit.

9. Dismissed.

December 11, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No