

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 3.4.2019

RSA- 961 of 2013(O&M)

Jagmal Singh

---Appellant

versus

Sri Pal and others

---Respondents

RSA- 970 of 2013(O&M)

Sri Pal and others

---Appellant

versus

Jagmal Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sachin Gupta, Advocate
for the appellant in RSA-961 of 2013
for respondent No. 1 in RSA- 970-2013**

**Mr. Sushil Jain, Advocate,
for the appellants in RSA-970 of 2013
for for respondents No. 1 and 2 in RSA-961 of 2013**

**Mr. Manoj Sharma, Advocate
for respondents No. 6 to 8 in RSA- 961 of 2013
for respondent No. 4 to 6 in RSA-970 of 2013.**

Rekha Mittal, J.

This order will dispose of RSA Nos. 961 and 970 of 2013 as these have emerged out of the same judgments and decrees passed by the courts. For the sake of convenience, facts are taken from RSA No. 961 of 2013.

Jagmal Singh, the plaintiff-appellant filed suit for permanent injunction in respect of plot bearing No. 13270 shown with letters ABCD in

the site plan, situated within the abadi of village Gharwal on the premise that he is owner in possession of the suit plot. It is averred that the suit plot is ancestral property inherited by the plaintiff from his forefather namely Kapoor Chand as in the bandobast of 1879, the plot in question fell to the share of Kapoor Chand and the same is used by the plaintiff for domestic purposes i.e. placing kurdies, cow dung cakes, wooden articles, tethering cattle etc. and kikkar trees are also in existence in the plot.

The trial court rejected claim of the plaintiff-appellant vide judgment and decree dated 1.2.2011 and appeal preferred by unsuccessful appellant was dismissed by the Additional District Judge, Sonapat. Both the courts have consistently held that the appellant failed to prove ownership of the suit plot or his possession of the same, thus, is not entitle to injunction against interference in his possession at the behest of contesting respondents-defendants.

Counsel for the appellant has relied upon document P1 Khasra Kishtwar 1879 with its Hindi version Ex.P1/A, in order to contend that suit plot was allotted to Kapoor Chand who was common ancestor of plaintiff and he died issueless. It is argued with vehemence that as Kapoor Chand was owner of suit plot situated within the abadi deh of the village and plaintiff is using plot for the purpose stated in the plaint and reiterated in his testimony on oath, he is entitle to protect his possession of suit property against forcible interference by the respondents-defendants.

Counsel representing the respondents and appellants in RSA No. 970 of 2013 has supported concurrent findings of fact recorded by the courts negating plea of the appellant that he is either owner or in possession of suit plot and is entitle to get injunction. He would apprise the court that

the appeal has been preferred by the respondents (appellants in RSA-970 of 2013) to express their grievance in regard to observations in concluding lines of para 19 of the judgment. It is argued that as the respondents have neither filed a suit nor a counter claim, findings recorded by the appellate authority that defendants No. 1 to 5 have failed to prove their ownership as well as possession over suit land are liable to be set aside as the same may cause prejudice to them in any litigation in future involving question of ownership of the plot in question.

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

Before advertng to the submissions made by counsel for the parties, it is pertinent to note at the outset that consistent findings of fact recorded by the courts cannot be interfered with unless the same suffer from legal error or perversity. Equally settled is that it is not open for the court in second appeal to re-appreciate the evidence and interfere in the judgments of the courts merely because a different view is possible.

Indisputably, the property in question is an open plot situated within abadi area of the village. The appellant-plaintiff has claimed ownership of the suit plot by pleading that the same was allotted to Sh. Kapoor Chand in the Bandobast of 1879. Both the courts have held that in the document Ex. P1, there is no reference to father's name of said Kapoor Chand. It has been admitted in cross examination by PW3 that their forefather came from village Ranila and as such they were not the proprietors of village Gharwal, thus, question of allotment of the suit land to his predecessor Kapoor Chand in the Bandobast of 1879 does not arise. Counsel for the appellant has failed to successfully assail these findings of fact in order to prove that findings qua ownership of suit plot suffer from an

error much less illegality.

The trial court has rightly held that using of plot for the purpose of placing kurdi, cow dung cakes, tethering cattle etc. is not an evidence of possession as has been held by this Court in **Bhan Singh and others vs. Tej Singh and others 1996(3) PLR 153.**

The contention raised by counsel for the respondents with regard to findings of the appellate court in concluding lines of para 19 with regard to the respondents having failed to prove their ownership as well as possession over suit land, counsel has not challenged factual correctness of these findings but has expressed grievance only on the pretext that the respondents have not filed suit claiming ownership of the plot in question. Indisputably, earlier the respondents filed suit for injunction claiming possession of the suit property but the same was dismissed and the judgment has attained finality. Since the respondents while refuting contentions of the appellant had raised a plea that they are owners of the plot in question, the said contention of the respondents on this aspect of the matter is not meritorious and accordingly rejected.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed, leaving the parties to bear their owns costs.

(Rekha Mittal)
Judge

3.4.2019

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