

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

RSA No.5272 of 2019 (O&M)

Date of Decision:02.12.2019

Manjit Kaur and another

.....Appellants

Versus

Roshan Lal and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Amandeep Soni, Advocate
for the appellants.

LISA GILL, J.

This appeal has been filed by the appellants-plaintiffs challenging judgement and decree dated 03.07.2019, passed by the learned District Judge, Jalandhar, whereby judgement and decree dated 27.09.2018, passed by the learned Civil Judge (Jr. Division), Jalandhar, has been set aside. Consequently, the suit for permanent injunction filed by the appellants-plaintiffs, has been dismissed.

Brief facts necessary for the adjudication of the case are that appellants-plaintiffs filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiffs over the land as detailed in the plaint. It is pleaded that plaintiffs are in cultivating possession of the suit land. Earlier, Darshan Singh son of Mangal Singh was in cultivating possession of the land in dispute and after his death, plaintiffs are continuously cultivating the same for the last 40 years. Pishori Lal son of Raj Kumar was the owner of the land in question, but the defendants are

now openly proclaiming that they have purchased the land in question. They only want to grab the same and have forged and fabricated documents in this regard also. Plaintiffs have got registered a case FIR No. 122 dated 14.06.2012, under Sections 420, 465, 467, 471, 120-B IPC at Police Station Navi Baradari, Jalandhar. Defendants wanted to take forcible possession of the land in dispute. It is further pleaded that the plaintiffs requested the defendants not to do so, but they refused. Hence the present suit was filed.

Suit was contested by the defendants. Various preliminary objections were taken in the written statement including that of the plaintiffs not approaching the Court with clean hands. It is pleaded that the plaintiffs are not in possession of the disputed property as defendant no.3 has purchased the property vide registered sale deed dated 23.11.2010 and she is the lawful owner in possession of the land in dispute. It is pleaded that the plaintiffs are trying to grab the property belonging to defendant no.3 and the defendants never tried to take forcible possession of the land in dispute as alleged by the plaintiffs. Rest of the averments therein, were denied and dismissal of the suit was prayed.

Replication to the written statement was filed by the plaintiffs. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP
2. Whether the suit is not maintainable?OPD
3. Whether the plaintiffs have no cause of action to file the present suit?OPD
4. Whether the plaintiffs have no locus standi to file the present suit?OPD
5. Whether the suit of the plaintiffs is vague?OPD
6. Whether the plaintiffs have not come to the Court with clean hands? If so its effect?OPD

7. Relief. .

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances of the case and evidence on record, concluded that as per Jamabandi, Ex.P-1 and Khasra Girdawries, Ex.P-2 and Ex.PX, husband of plaintiff no.1, father of plaintiffs no.2 and 3 namely Darshan Singh, is reflected to be in possession of the disputed land. It is further observed that though defendant no.3 has purchased the property by way of a registered sale deed and his name is reflected in the column of ownership in the jamabandi for the year 2009-10, Ex.D-2, defendants could not prove their exclusive possession over the disputed property and that there is no evidence on record to rebut the evidence produced by the plaintiffs i.e. Ex.P-1, Ex.P-2 and Ex.PX. Accordingly, suit filed by the plaintiffs seeking permanent injunction for restraining the defendants from interfering in their peaceful and lawful possession, was decreed.

Appeal preferred by the defendants was however allowed by the learned District Judge, Jalandhar, vide impugned judgement and decree dated 03.07.2019. It is observed that the land in dispute stood acquired by the Jalandhar Improvement Trust and actual physical possession was taken by it, therefore relief of permanent injunction could not be granted to the plaintiffs.

Aggrieved therefrom, present appeal has been filed by the appellants-plaintiffs.

Learned counsel for the appellant vehemently argues that

possession of the appellants over the suit property, is duly proved on record. The question of title/ownership, is of no consequence in a suit for permanent injunction. Therefore, it is prayed that the present appeal be allowed and the judgement and decree dated 03.07.2019, passed by the learned District Judge, Jalandhar, be set aside. Consequently, suit filed by the appellants-plaintiffs be decreed throughout.

I have heard learned counsel for the appellants and have gone through the file as well as the photocopy of the record produced by learned counsel before this Court, with his assistance.

Learned counsel for the appellants is unable to deny that the land in question stands acquired by the Improvement Trust, Jalandhar. Compensation qua the acquired land has already been disbursed by the Improvement Trust, Jalandhar/State. Learned counsel for the appellants informs that a separate civil suit, filed by the appellants challenging the sale deed in favour of the defendants, is pending. It is further a matter of record that DW-3-Gurdeep Lal, Patwari Halqa, had produced the summoned record in respect to the property in question. DW-3, specifically stated that the suit property was acquired by the Improvement Trust, Jalandhar. Gurdeep Lal, Patwari Halqa-DW-3, has categorically stated that at present the Improvement Trust, Jalandhar, has actual physical possession over the suit property. Reference to the cross-examination of DW-3, wherein he has stated that he could not say whether name of Manjit Kaur, is reflected in the column showing possession of the land in question or not, is of no avail to the appellants. DW-3 has categorically denied the suggestion that Improvement Trust, Jalandhar, did not take possession of the suit property or

that he has made a false statement. It is relevant to note at this stage that appellant-Manjit Kaur, in her cross-examination has admitted that she has not cultivated the land since the year 2013. The land in question admittedly stands acquired by the Improvement Trust, Jalandhar and compensation thereof, deposited by the Improvement Trust, Jalandhar.

In the given facts and circumstances of the case, I do not find any ground whatsoever to interfere in the impugned judgement dated 03.07.2019, passed by the learned District Judge, Jalandhar or to grant the relief of permanent injunction to the plaintiffs against the defendants. However, observation by the learned District Judge, Jalandhar, to the effect that compensation was rightly not paid to the plaintiffs-appellants, needless to say, will have no bearing on the pending civil suit filed by the appellants. The same was clearly not the subject matter of the *lis* between the parties herein.

Learned counsel for the appellants, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Learned District Judge, Jalandhar, after proper appreciation and consideration of the evidence on record has rightly reversed judgement dated 27.09.2018, passed by the learned Civil Judge (Jr. Division), Jalandhar, vide judgement and decree dated 03.07.2019, which calls for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgment and decree dated 03.07.2019 passed by the learned District Judge, Jalandhar, is upheld.

Present appeal is, consequently, dismissed with no order as to cost. No orders need to be passed in any other pending application in view of the dismissal of the appeal.

02.12.2019

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.

[LISA GILL]

Judge