

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4015 of 2015 (O&M)
Date of decision: 01.03.2019

Dariyao Singh

..... Appellant

Versus

Bhupender and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Chanderhas Yadav, Advocate for the appellant.

Mr. Ram Pal Verma, Advocate for respondents No.1 to 3.

ANIL KSHETARPAL, J. (ORAL)

CM-2620-C-2019

Prayer in the application is for impleading legal representative of Dariyao Singh-appellant.

Application is allowed subject to just exceptions. The legal heir of the appellant as mentioned in the application are ordered to be brought on record only for the purpose of prosecuting the appeal.

Main Case

Plaintiff-appellant is in regular second appeal against the judgments passed by the Courts below dismissing his suit for permanent injunction restraining the defendants from interfering in his possession except in due course of law.

Plaintiff has pleaded that the parties were co-sharer in the land measuring 63 kanals 14 marlas and they are in exclusive possession of the land comprised in Killa No.6/1 (4-15) Khasra No.138/1/1 (1 kanal and 6 marlas). It was further pleaded that the partition proceedings are pending but the defendants are refusing to wait for the partition to take place and they are

interfering in the possession of the plaintiff.

During the pendency of the suit, the partition proceedings were finalized by the Assistant Collector and the appeal filed against that was also dismissed. The order passed by the learned Collector dated 28.09.2012 is Ex.P-3 on the file. On careful reading of Ex.P-3, the order of Collector, it is apparent that the land referred above was found to be in continuous possession of plaintiff-appellant for quite some time and they had laid down underground pipe for irrigating the fields (agriculture land). The land comprised in Rect. No.138/1/1 was found to be bounded with boundary wall and a samadhi of lady was also constructed therein. Learned counsel for the respondent has submitted that no doubt partition proceedings have been finalized, however, their revision against the order of final partition is still pending before the Financial Commissioner.

As on date, the partition order which is effective, allots the land in dispute to the plaintiff. From reading of Ex.P-3, it is apparent that their possession is old one. Accordingly, the Courts below have erred in refusing to grant injunction to the plaintiff-appellant from forcible dispossession.

Hence, the present appeal is allowed. A decree for injunction is passed in favour of the plaintiff-appellant subject to final decision of the Financial Commissioner where revision is pending against the order of partition dated 21.12.2012. The parties shall be bound by the order passed in the partition proceedings finally.

CM-2618-19-C-2019

Both the applications are dismissed as not pressed.

01.03.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No