

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1428 of 2014 (O&M)

Date of decision : 12.9.2019

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Rameshwar

.....Appellant

vs.

Surender Kumar and another

.....Respondents

**Coram: Hon'ble Mr. Justice H. S. Madaan**

Present : Mr. Jatin Hans, Advocate for the appellant

Mr. Akshay Kumar Goel, Advocate for respondent No.1.

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**H. S. Madaan, J.**

Briefly stated facts of the case are that plaintiff Surender Kumar aged about 68 years son of Murli Dhar, resident of village Tosham, Tehsil Tosham, District Bhiwani, had brought a suit for grant of permanent injunction against defendants i.e. Rameshwar and Satbir, craving for issuance of decree against defendants restraining them from interfering into his peaceful possession over the land comprised in Khewat No.12, Khatoni No.19, Khasra No. 159/78/3 (3-10), 12/2/2 (1-15), total measuring 5 kanal 5 marla, situated in the revenue estate of village Tosham, Tehsil Tosham, District Bhiwani, as

per Jamabandi for the year 2001-02 and further restraining the defendants from taking forcible possession of the suit land from the plaintiff.

As per version of the plaintiff Sarvshri Lajpat Rai, Kulwant Rai, Ashik Kumar – all sons and Smt. Kailashwati, Smt. Tilakwani – daughters of Chandu son of Jagan Nath were owners in possession of the land measuring 36 kanal 7 marla in equal shares. Out of the said land all of them had sold land measuring 5 kanal 5 marlas to the plaintiff vide sale deed dated 30.11.2005. Mutation was entered and sanctioned in favour of the plaintiff on the basis of sale deed on 27.7.2006. The plaintiff has been in actual physical possession of the land so purchased by him from vendors ever since. Defendants having no concern with the suit land, threatened to take forcible possession thereof from the plaintiff, not listening to his requests to desist from doing so, feeling aggrieved, the plaintiff filed a suit for grant of permanent injunction.

On being put to notice, defendant No.1 appeared and filed written statement, contesting the suit, taking various legal objections challenging the maintainability of the suit, locus standi of the plaintiff to bring it, further contending that no cause of action arose to the plaintiff to file the suit and the Court had no jurisdiction to entertain and try the suit, further alleging that plaintiff had concealed the true facts from the Court. According to the defendant grandfather of Lajpat Rai, Kulwant Rai and Ashok Kumar sons and Kailashwati and Tilakwani daughters of Chandu had given the suit land to the father of

the answering defendant on Batai -Tihai as the land in dispute was barren and was uncultivable. Father of defendant leveled the land in dispute and removed the wild bushes etc. and made it fit for cultivation. He cultivated the land till the year 1991 and after his death in the year 1992, answering defendant has been cultivating it on Batai -Tihai. Plaintiff came to the said land on 25.3.2006 and stated that revenue record is in his favour and he would take forcible possession of that land from the defendant, as such the answering defendant made enquiries from the Patwari and filed an application before Tehsildar for correction of Khasra Girdawari. Vide order dated 18.5.2007, Tehsildar-cum-Assistant Collector IInd Grade, Tosham, had ordered to correct Khasra Girdawari in favour of the answering defendant. The answering defendant is in actual physical possession of the suit land as tenant and plaintiff has been trying to take forcible possession of the said land from the defendant on the basis of wrong revenue record. Refuting the remaining assertions, such defendant prayed for dismissal of the suit.

Defendant No.2 had also appeared and filed separate written statement, which is almost on the similar lines as that of defendant No.1.

No replication was filed by the plaintiff.

From the pleadings of the parties, following issues were framed :-

- i) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP

- ii) Whether the civil court has no jurisdiction to entertain and to try the present suit? OPP
- iii) Whether the suit of the plaintiff is not maintainable in the present form? OPD
- iv) Relief.

Both the parties led evidence in support of their respective case.

In order to prove his case, the plaintiff examined Pahlad Singh as PW-1 and himself appeared in the witness box as PW-2, and closed the evidence after tendering the following documents:-

- Ex. P-1            Copy of sale deed No. 2304 dated 30.11.2005.
- Ex. PW 1/A      Copy of register of deed writer
- Ex. P-2            Copy of mutation No.1597
- Ex. P-3            Copy of Jamabandi for the year 1996-97
- Ex. P-4            Copy of Jamabandi for the year 2001-02
- Ex. P-5            Copy of Jamabandi for the year 2006-07
- Ex. P-7            Copy of application dated 24.12.2009.
- Ex. P-8 to P-10 Copies of Khasra Girdawari.

On the other hand, the defendants, examined Rameshwar as DW-1, Surender as DW-2 and Narender as DW-3 and thereafter closed their evidence after tendering Ex. D-1 copy of order dated 18.5.2007.

In rebuttal the plaintiff tendered certain more documents.

After hearing the counsel for the parties, the trial Court,

decided issue No.1 in favour of the plaintiff, whereas issues No. 2 and 3 were disposed of as not pressed by the defendants. As a result of findings on the issue No.1, vide judgment and decree dated 6.11.2012, the suit of the plaintiff was decreed with costs.

Defendant No.1 feeling dissatisfied with the said judgment and decree had filed an appeal before the District Judge, Bhiwani, which was assigned to Additional District Judge, Bhiwani, who vide judgment and decree dated 6.11.2012, dismissed the appeal, affirming the judgment and decree passed by the trial Court.

Defendant No.1 Rameshwar was still dissatisfied and he has approached this Court by way of filing Regular Second Appeal, notice of which was given to the plaintiff-respondent and respondent No.2.

Plaintiff-respondent No.1 has put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

Both the Courts below, on analysis of the evidence brought on record by the parties, have come to the conclusion that plaintiff is in possession of the suit land at the spot. Reference to Jamabandi for the year 1996-97 Exhibit P-3 has been made in which children of Chandu, who are vendors of the present plaintiff are shown as owners in possession of the land in question. Similar position is reflected in the Jamabandi for the year 2001-02 Exhibit P-4. Whereas in Jamabandi for the year 2006-07, Exhibit P-5, name of the plaintiff finds mention as owner in possession of the suit land. Vide order

Exhibit P-7 by Tehsildar and Assistant Collector, Tosham, application of defendant No.1 for correction of Khasra Girdawari had been adjourned sine die. Khasra Girdawari Exhibit P-8 reflects possession of the vendors of the plaintiff, whereas Khasra Girdawari Exhibit P-9 reflects possession of the plaintiff at the spot. The revenue record supports the case of the plaintiff to be in possession of the suit land as owner. The defendant could not bring any document to show that he is in possession as tenant under the owners. Though on an application filed by defendant No.1 for correction of Khasra Girdawari, that had been allowed, but when plaintiff moved an application that he has not been made party to those proceedings and since in the meanwhile the present suit had been filed, the application was adjourned sine die. No correction in the Khasra Girdawari is shown to have taken place so far, so as to reflect defendant No.1 in possession of the suit land, as such trial Court was fully justified in concluding the plaintiff has been found to be in possession of the suit land and defendants have no concern therewith, they being unable to prove their possession on such land as tenants. The trial Court was fully justified in granting relief of permanent injunction to the plaintiff restraining the defendants from interfering in possession of the plaintiff over the suit land illegally or forcibly.

The Court of Additional District Judge, Bhiwani, had rightly dismissed the appeal filed by defendant No.1 Rameshwar against the judgment and decree passed by the trial Court.

Counsel for the appellant has referred to authorities i.e.

**Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and others**

2008(2) RCR (Civil) 879, Sri Thimmaiah vs. Shabira and others

2008 (1) RCR (Civil) 915 and Ramji Rai and another vs. Jagdish

Mallah (Dead) through LRs and another 2007 (3) RCR (Civil) 680,

but those are not helpful to the case of the appellant, due to different facts and circumstances and in view of the discussion supra.

The judgments and decrees passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity in such judgments.

No substantial question of law arises in the present appeal.

Therefore, finding no merit in the appeal, the same stands dismissed.

**12.9.2019**  
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**( H.S. Madaan )**  
**Judge**

Whether speaking / reasoned                      Yes / No

Whether reportable                                      Yes / No