

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2442 of 2014 (O&M)

Date of decision : 20.3.2019

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Sarmanpreet Singh and another

.....Appellants

vs.

Gurvinder Singh and others

.....Respondents

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

Present: Mr. Veneet Sharma, Advocate for the appellants

Mr. S.K. Mahajan, Advocate for the respondents.

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H. S. Madaan, J. (Oral)

Briefly stated, facts of the case are that plaintiffs Sarmanpreet Singh and Sukhraj Bahadur Singh, both sons of Sh. Gurbax Singh, residents of village Ghukewali, Tehsil Ajnala, District Amritsar, had brought a suit under Section 45 of the Punjab Land Revenue Act, against defendant Gurvinder Singh, seeking a declaration that entry in the name of defendant No.1 in the jamabandi for the year 2003-04 in respect of suit property measuring 7 kanal 17 marla, situated in village Sansra, Tehsil Ajnala, District Amritsar, was illegal and liable to be corrected, besides craving for relief of permanent injunction, restraining defendant No.1, from dispossessing plaintiffs, forcibly and illegally.

Originally, in the said suit, the plaintiffs had arrayed S/Sh. Narinder Singh, Palwinder Singh and Lehna Singh sons of Balbir Singh, residents of village Ghukewali, Tehsil Ajnala, District

Amritsar, also as respondents. Subsequently, the suit against said respondents was dismissed as withdrawn.

As per case of the plaintiffs, they had purchased the suit land measuring 7 kanal 17 marla from Lehan Singh son of Balbir Singh, vide registered sale deed dated 10.2.2000, for a sum of Rs.1,47,500/-; that joint possession of the said property was delivered by the vendor to the plaintiffs at the time of execution and registration of the sale deed and the plaintiffs are in possession as such since then. However, in the jamabandi for the year 2003-04, name of defendant No.1 was wrongly mentioned in column No.5 of jamabandi as 'Gair Marusi'. The same is contrary to the factual position, since plaintiffs are in continuous possession of the suit property. According to the plaintiffs, they called upon the defendants to admit their claim, but to no effect, giving rise to a cause of action to the plaintiffs to bring the suit in question.

On notice, defendant No.1 appeared and filed written statement, contesting the suit raising preliminary objections to the effect that suit was not maintainable; that the plaintiffs have no locus standi to file the present suit; that no cause of action arose to the plaintiffs to bring the suit; that the plaintiffs were estopped by their own act and conduct from filing the suit; that the plaintiffs had suppressed material facts from the Court; that the suit was bad for non-joinder and mis-joinder of the necessary parties; that suit was not properly valued for the purpose of court fee and jurisdiction. On merits the answering defendant contended that the land in question is

ownership of Narinder Singh, Lehna Singh and Gurvinder Singh. It was denied that the plaintiffs had purchased the property from Lehna Singh vide registered sale deed dated 10.2.2000 or that they came in joint possession of the land. According to such defendant he is in exclusive possession of the suit property being tenant Tasvar Rehni; that there is no khasra No. 11/14 in the jamabandi; that name of defendant No.1 is rightly appearing in column No.5 of the jamabandi since he is in possession of the suit property, which was mortgaged to him vide mortgage deed dated 19.5.1999 executed by Narinder Singh, Palwinder Singh and Balbir Singh, sons of Lachman Singh and even now defendant No.1 is in possession as mortgagee. The entry in the jamabandi is correct and there is no occasion for its deletion. According to such defendant, he had filed a suit earlier with regard to the property including the property in question against father of the plaintiffs, who was attorney holder of plaintiffs, in which father of plaintiffs had suffered a statement that they would take possession in due course of law. It may be mentioned here that defendant No.1 had filed a counter claim seeking possession of Khasra number, on the ground that he had purchased $2/3^{\text{rd}}$ share from the land bearing Khasra No. 41/13/1/(2-7) from Makhan Singh one of the co-sharers in the joint khata. The remaining $1/3$ share was purchased by Sukhraj Bahadur Singh and Sarmanpreet Singh and sons of Gurbax Singh - the present plaintiffs. The defendant No.1 counter claimant is in exclusive possession of such land and he apprehend threat at the hands of plaintiffs that they would dispossess him from the suit

property. Therefore, he prayed that plaintiffs be restrained from interfering in peaceful and lawful possession of counter claimant defendant No.1 or dispossessing him from the said land, illegally or forcibly.

The plaintiffs filed written statement to the counter claim denying the assertions therein.

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

1. Whether the plaintiffs are in possession of the suit property? OPP
2. Whether the entry in column No.5, showing the name of defendant No.1 as Gair Marusi, is illegal and is liable to be removed? OPP
3. Whether the defendants tried to take forcible possession of the suit property? OPP
4. Whether the counter claim is not maintainable? OPP
5. Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD
6. Whether father of the plaintiffs Gurbax Singh has admitted the possession of the plaintiffs by suffering statement in previous litigation on 24.12.1997. if so, its effect? OPD
7. Whether defendants are entitled to injunction? OPD

8. Relief.

Parties led evidence in support of their respective claims.

During the course of their evidence, the plaintiffs examined Gurbax Singh as PW-1, Numbardar Dhir Singh as PW-2, Gurvail Singh as PW-3 and Dilbagh Singh as PW-4. Some documents were tendered. Thereafter evidence of plaintiffs was closed.

In rebuttal, defendant No.1 got statement of Parminder Singh recorded as DW-1 and himself stepped into the witness box as DW-2 and after tendering documents closed his evidence.

After hearing the arguments, the trial Court decided all the issues against the plaintiffs and in favour of the defendant.

The suit of the plaintiffs was dismissed with costs, whereas counter claim filed by defendant No.1 was allowed and plaintiffs were restrained from interfering in peaceful possession of defendant No.1 over the suit land, otherwise then in due course of law. This was so done by the trial court vide judgment and decree dated 29.2.2012.

Feeling aggrieved by the said judgment and decree passed by the trial Court, the plaintiffs preferred an appeal to the court of District Judge, Amritsar which was assigned to Additional District Judge (Adhoc), Fast Track Court, Amritsar. The said Court vide judgment and decree dated 16.12.2003, dismissed the appeal with costs and affirmed the judgment and decree passed by the trial Court.

Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court, by way of filing the present appeal, notice of which was given to the respondents-plaintiffs.

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

It may be mentioned here that , the trial Court has dealt with all the aspects of the case in a very detailed and convincing manner. The trial Court has observed that entries in the revenue record, showing possession of the defendants over the suit land, have never been challenged by the plaintiffs before the revenue authorities. All the PWs had admitted in their cross examination, that the entries in the Khasra Girdawari had been made by the Halqa Patwari after visiting the spot. Thus the contention of the plaintiffs that wrong entries had been made by the concerned Patwari in column of possession stands nullified. The trial Court has taken note of the fact that the plaintiffs had concealed certain facts at the time of filing of suit to the effect that Narinder Singh, Balbir Singh and Palwinder Singh, the original owners of the land in dispute, had mortgaged the land measuring 22 kanals 3 marlas in favour of defendant No.1 on 19.5.1999. PW-2 Dhir Singh had admitted so in his cross examination stating that mortgage deed was executed in favour of defendant No.1 on 19.5.1999 and he had signed that deed as an attesting witness and possession of defendant No.1 is reflected in the revenue record as mortgagee.

The trial Court has further observed that earlier defendant No.1 had filed a civil suit seeking relief of permanent injunction against Gurbax Singh, father of the present plaintiffs, where Gurbax Singh had suffered a statement that he would not interfere in

possession of Gurvinder Singh (present defendant No.1) over the suit land. Copy of that statement has been proved on record as Exhibit D-2 and it was in view of said statement that suit was dismissed as withdrawn.

It being so, the plaintiffs cannot raise any dispute with regard to possession over the suit land and possession of present defendant No.1 stands proved. It being so, the trial Court has disbelieved the version of the plaintiffs that defendant No.1 had tried to take forcible possession of suit land from the plaintiffs. Finding defendant No.1 to be in possession of the suit land, his counter claim was allowed and injunction was granted to him against the plaintiffs in the suit.

The first Appellate Court has also dealt with such aspect in detail while agreeing with the observations of the trial Court and verdict given on all the issues, as well as, final decision in the matter.

I do not see any reason to disagree with the Courts below. The judgments passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. Those do not suffer from any illegality or infirmity.

No substantial question of law arises in this case.

There is no merit in the appeal. The same stands dismissed.

20.3.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No