

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

**RSA No.2498 of 2014 (O&M)
Date of decision: 18.12.2019**

**Sumer Singh (since deceased) through LRs and another
.....Appellants
Versus**

**Sher Singh and others
.....Respondents**

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Ekta Thakur, Advocate,
for the appellants.

Mr. Sandeep Kumar Sharma, Advocate,
for the respondents.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 24.04.2014 passed by the Additional District Judge, Rohtak, dismissing an appeal filed by plaintiff-appellants (hereinafter referred to as 'the plaintiffs') against the judgment and decree dated 12.07.20.13 passed by the Civil Judge (Junior Division), Rohtak, whereby suit filed by them (plaintiffs) has been dismissed.

Sumer Singh etc.-plaintiffs (appellants herein) filed a suit for permanent injunction with the averments that they (plaintiffs) were owners/co-sharers in Khewat No.50/49 and were in exclusive possession of Killa No.143/19/1 (2-10), 19/2 (4-2) situated within the revenue estate of village Kahnaur, Tehsil and District Rohtak since the life time of their father Mam Chand. Plaintiffs had been using the suit property for storing the fuel, fodder, dung cakes etc. As per plaintiffs, defendants being head strong

possession over the suit land, specifically over the portion marked as ABCD in the site plan, which was part of Killa No.143/19/2. Hence, the suit.

Upon notice, defendants (respondents) filed written statement taking preliminary objections with regarding to maintainability, cause of action, suppression of material facts, court fee, jurisdiction etc. On merits, it was stated that plaintiffs were not in exclusive possession of the suit property. Father of defendants being co-sharer, had been in possession of 10 Marlas of the disputed khewat. Defendants had purchased the adjacent plot measuring 2 Marlas from one Ramesh Chander son of Khan Chand, situated at Kahnaur and they are in possession of the suit property. They have a tubewell near drain No.8 and its water was used for irrigation of the land. They have been using the suit land as *garha khad* and *khurdi*. It was further submitted that plaintiffs had left the village about thirty years back and they had shifted to Kalanaur. Neither the plaintiffs are residing in village nor they are in possession over the suit property. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

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

1. Whether the plaintiffs are entitled to a decree for permanent injunction as prayed? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the plaintiffs have no cause of action and no locus standi to file the present suit? OPD
4. Whether the plaintiffs have concealed true and material facts from this court and if so, its effect? OPD
5. Whether the present suit has not been correctly valued for the purpose of court fees? OPD

6. Relief.

Trial Court, after hearing learned counsel for the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

While dismissing the suit, trial Court had observed that it is settled principle of law that for seeking the relief of permanent injunction, plaintiffs have to prove their possession over the suit property. Although, in the revenue record, names of the plaintiffs have been shown as co-sharers, but no evidence was led by them to prove their possession over the suit property, except the testimony of plaintiff-Sumer Singh (PW-1). In the plaint, plaintiffs have claimed themselves in possession over the suit property, but no evidence was led to prove their possession. On the other hand, defendants have proved their possession over the suit property. Defendants are having voter and ration cards showing that they are residents of village Kahanaur. The first appellate Court has further observed that admittedly, the suit property is situated within the revenue estate of village Kahnaur, Tehsil and District Rohtak. Ex.P1 was the jamabandi for the year 2004-2005 and Ex.P3 was the Jamabandi for the year 2009-2010. As per these documents, several persons had been shown as co-sharers over the suit property. Plaintiff Sumer Singh (PW-1) had admitted that the suit property bearing Killa No.143/1/, measuring 9 Kanals 2 Marlas, was disputed place. It was also admitted that he was not having ration card of village Kahnaur, rather he was residing at village Kalanaur. So, he was having ration card of village Kalanaur. He had admitted that there was no boundary wall of the dispute property. Plaintiff had further deposed that the suit property was Banjar Qadim and he along with other plaintiffs have been using the same for storing the fuel, fodder

etc. But, in the site plan Ex.P2, property in question had been shown as vacant plot. Neither any store of dung, fodder had been shown nor any evidence had been led to prove exclusive possession of the plaintiffs over the suit property. With these observations, suit of the plaintiffs has been dismissed by both the Courts below.

After hearing learned counsel for the appellants and going through the impugned judgments as well as documents relied upon by the parties, this Court is of the view that plaintiff-appellants have failed to lead any cogent and convincing evidence to prove that they are in possession over the suit property. In the absence of any such evidence, suit of plaintiff-appellants has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

18.12.2019
ajp

(RITU BAHRI)
JUDGE

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