

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6691 of 2016 (O&M)

Date of Decision: May 17, 2019

Suresh

...Appellant

Versus

Santra Devi (since deceased) through L.Rs & another

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sarvjit Singh Khurana, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.17463-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 52 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.6691 of 2016

Appellant-defendant is in Regular Second Appeal against the judgment and decree of the Lower Appellate Court, whereby the suit of the respondent-plaintiffs partly decreed by the trial Court, has been decreed in toto.

Respondent-plaintiffs sought the injunction against the defendants in respect of parcel of land comprising Khewat No.74, Khatoni No.102, Rect.No.2 Killa No.18/2 Min(2-0) Chahi, Khatoni No.103 Rect.No.2, Killa No.18/2 Min(0-16) Chahi, 20 (7-19) total land measuring 10 kanals 15 marlas on the premise that they are owners in possession as tenants on Batai Tihai. The defendants extended threat. Even FIR was

registered, but he did not stop and, therefore, the suit was filed.

Defendants opposed the suit and alleged that they had been in possession and cultivation of the land. Application for rectification of the girdawari was decided on 28.05.1999 by which the plaintiffs admitted the possession of the defendants. After rectification of the khasra girdawari, a separate suit was filed incorporating the names as tenants in the revenue record and after the death of Harnarain, defendant No.2 was reflected as *Gair Marusi* tenant on the land.

Since the parties were at variance, the trial Court framed the following issues:-

“1. *Whether the plaintiffs are entitled for a decree of permanent injunction against the defendants as prayed for?*
OPP

2. *Whether the plaintiffs are entitled for a decree of mandatory injunction against the defendants as prayed for?*
OPP

3. *Whether the suit is not maintainable in the present form?*
OPD

4. *Whether the plaintiffs have no cause of action to file this suit?* OPD

5. *Whether plaintiffs have concealed the material facts from the Court?* OPD

6. *Whether the Civil Court has no jurisdiction to entertain the present suit?* OPD

7. *Relief.”*

Plaintiffs examined five witnesses and brought on record Ex.PX1 to Ex.PX4, Ex.PW3/A, Ex.PW5/1 and Ex.PW5/2. On the other hand, the defendants examined five witnesses and brought on record documents Ex.D1, Ex.D2, Ex.DW4/A and Ex.DW5/B.

By examining Roznamcha Vakyaati Ex.PX4 bearing No.342 of

rectification of khasra girdawari, the trial Court protected the possession by granting injunction against the defendants on Killa No.18/2 Min(0-2) and 18/2Min (0-16) of Khewat No.74, Khatoni No.102, Rect.No.2 and Khatoni No.103, Rect.No.2, but denied with regard to Killa No.20 (7-19). The Lower Appellate Court decreed the suit in toto.

Mr. Sarvjit Singh Khurana, learned counsel for the appellant-defendant submitted that the Rapat Roznamcha is of 1999 reflecting the ownership and possession of the defendants and, therefore, the entries in the khasra girdawaries would construe as symbolic possession of the plaintiffs and not actual possession. It was fault of the revenue authority in not making the correction as in those proceedings, there is a categorical admission of the plaintiffs qua possession. Even the cross-examination of the plaintiff was in tandem with the stand of the defendants.

I have heard the learned counsel for the appellant-defendant and appraised the paper book.

The revenue record did not reflect entry of Rapat Roznamcha and the killa numbers referred above were found to be in possession of the plaintiffs. Rapat Roznamcha would not confer the possession nor the defendants took any steps for correction of the khasra girdawari despite the order of the Assistant Collector. There would have some force had the defendants set up a counter claim. In such circumstances, the Lower Appellate Court, being the last court of fact and law, gave credence to the revenue record than the oral testimony. Findings under challenge cannot be said to be suffering from any illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law.

Resultantly, the appeal is dismissed.

May 17, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No