

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

**RSA No.273 of 2014 (O&M)
Date of decision : 23.7.2019**

Sher Singh

...Appellant

Vs.

Amar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.S.K.Aneja, Advocate for the appellant.

None for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this Regular Second appeal, unsuccessful plaintiff has laid challenge to the judgment and decree of the appellate Court dated 7.9.2013, affirming judgment and decree of the trial Court dated 3.5.2011, whereby his suit for permanent injunction was dismissed.

Briefly, the appellant claiming himself to be the “*Gair Marusi*” tenant on land measuring 17 Kanals 17 Marlas situated in village Asafwala, Tehsil Fazilka detailed in the head note of the plaint being successor of his father Gurdit Singh owned by one Balbir Kaur widow of Ram Singh filed suit for permanent injunction against his own brother to restrain him from interfering into his cultivating possession as “*Gair Marusi*” tenant over the same.

Upon notice, respondent refuting the claim of the appellant pleaded that he was in possession of 4 Kanals of the suit land out of the total

land measuring 17 Kanals 17 marlas claimed by the appellant under his cultivating possession as “Gair Marusi”. Therefore, his suit was liable to be dismissed.

After holding trial, learned trial Court dismissed the suit vide judgment and decree dated 3.5.2011. Being aggrieved, the appellant approached the first appellate Court, but remained unsuccessful and his appeal was dismissed vide judgment and decree dated 7.9.2013.

Learned counsel for the appellant-plaintiff contends that both the Courts below failed to appreciate that atleast suit of the appellant qua land measuring 13 Kanals 17 marlas leaving 4 kanals was liable to be decreed, because there was no counter claim against the claim of the appellant qua his possession over 13 Kanals 17 marlas as “Gair Marusi” tenant.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds the instant appeal completely devoid of merits for the reasons to follow:

No question of law much less substantial has been raised. Therefore, this regular second appeal is held not maintainable.

The appellant has claimed his possession over the suit land as “Gair Marusi” tenant but did not produce any rent receipt, rent agreement, that he ever paid any rent to his landlord in respect of the suit land. The fact cannot be lost sight of that in the States of Punjab and Haryana, the entries in the revenue record qua possession in favour of a third person as “Gair Marusi” or in any capacity whatsoever of whose ownership vests in some other person are fictitious and stray entries in absence of any rent note or rent receipt. Thus, they are not liable to be looked into or given any effect.

In the instant case also the appellant has based his claim on the basis of revenue entries, not supported by any documentary proof. Therefore, the same are declared as null and void and illegal.

Respondent is none else, but real brother of the appellant. Therefore, it is apparent on record that both the brothers are playing friendly match. It is a malafide attempt of the appellant to get some decree under the garb of present suit which would adversely affect the owner of the suit land who is a widow, in her absence as she has not been impleaded as party. There is no force in the submission of counsel for the appellant that owner of the suit property was not necessary party inasmuch as no relief was claimed against her in view of the fact that any order adversely affecting the rights of a owner should not be passed in his absence. Hence, this Court is not inclined to interfere in the well reasoned concurrent findings of both the Courts below against the appellant-plaintiff in the absence of the true owner of the suit land.

I have gone through the judgments of both the Courts below and find no illegality and adversity in the same. Therefore, the present appeal is hereby dismissed with costs.

23.7.2019
Meenu

(RAMENDRA JAIN)
JUDGE

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