

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

RSA No.108 of 2018 (O&M)
Date of Decision: May 08, 2019

Balbir Singh

...Appellant

Versus

Jasmer Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Sonia G. Singh, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

CM-175-C-2018

For the reasons mentioned in the application, the same is allowed and delay of 18 days in filing the appeal is condoned.

CM-176-C-2018

For the reasons mentioned in the application, the same is allowed and delay of 71 days in re-filing the appeal is condoned.

CM-174-C-2018

Allowed as prayed for, subject to all just exceptions.

RSA-108-2018

The instant appeal has been filed seeking to challenge the judgment and decree dated 14.03.2017 passed by the lower Appellate Court whereby, the appeal filed by the appellant-plaintiff against the judgment and

decree dated 05.09.2012 passed by the lower court, has been dismissed.

In short, the facts of the case are, that the appellant-plaintiff has filed the present suit praying that a decree of pre-emption in respect of the land in question measuring 11K-7M, as detailed in para 3 of the plaint, regarding which sale deed bearing Vasika No.2578 dated 17.05.2005 has been executed by respondents-defendants No.2 to 10 in favour of respondent-defendant No.1, be passed in his favour. The appellant-plaintiff claimed that he along with his brothers respondents-defendants No.12 & 13 and respondent-defendant No.11 (uncle) are in cultivating possession of the suit land under respondents/defendants No.2 to 10 as tenants-in-common, which fact was categorically denied by respondent/defendant No.1 in his written statement. Respondent/defendant No.1 claimed that the appellant-plaintiff as well as his brothers never remained in actual and physical possession of the suit land. It was averred that respondent/ defendant No.1 had filed a petition for correction of Khasra-girdawari before the Assistant Collector, II Grade, Karnal and he was found in physical possession of the suit land.

From the pleadings of the parties, issues were framed by the lower court and the parties led their respective evidence and after hearing both the sides, the lower court dismissed the suit of the appellant-plaintiff and the findings of the lower court were affirmed in appeal by the lower Appellate Court. Aggrieved, the instant regular second appeal has been filed.

Learned counsel for the appellant-plaintiff argues that the courts below have wrongly held that the appellant-plaintiff has failed to

prove his tenancy whereas, the entries in the jamabandi supported the case of the appellant-plaintiff. It is contended that the courts below failed to appreciate the fact that name of the appellant-plaintiff and his father was incorporated in the jamabandi as Gair Morusi, which means tenants at will, but this fact has been wrongly ignored by the courts below.

I have heard learned counsel for the appellant-plaintiff and have gone through the record of the case.

In the instant case, the appellant-plaintiff has failed to prove the contract of tenancy by examining the vendors of the suit land i.e. respondent-defendants No.2 to 10, apart from proving his possession over the suit land by leading any documentary evidence. The revenue entries were not found according to the actual position regarding the possession over the suit land. In his plaint, the appellant-plaintiff claimed that his father Ram Chander along with respondent-defendant No.11 had been tenants-in-common over the suit land under respondents-defendants No.2 to 10 and after death of his father, he along with his brothers had become tenants over the suit land. However, in his replication as well as in his affidavit Ex.PW1/A, the appellant-plaintiff had taken a different plea that respondent-defendant No.11 never cultivated the suit land and he had relinquished his share in favour of his father-Ram Chander. On the contrary, respondent/defendant No.11 in his written statement had stated that neither Sh. Ram Chander nor he was in cultivating possession over the suit land and the appellant-plaintiff wanted to take the benefit of a wrong revenue entry. The appellant-plaintiff never took any initiative by moving an application to the officials of the revenue department for correction of

khasra-girdawari qua the suit land in his favour after the death of his father. Further, entries in the khasra-girdawari have already been changed in favour of respondent-defendant No.1. The appeal filed by the appellant-plaintiff against the said order of change in the entries of the khasra-girdawari has already been dismissed. Apart from the above, the suit of the appellant-plaintiff was also found to be time barred under the Limitation Act. Under these circumstances, the courts below came to hold that the appellant-plaintiff along with his brothers are not in possession of the suit land. Learned counsel for the appellant-plaintiff has miserably failed to point out any irregularity in the findings so recorded by the courts below.

In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

Dismissed.

May 08, 2019

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No