

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

**RSA No.2308 of 2017 (O&M)
Date of Decision.07.03.2019**

Banarsi Dass (deceased) through LRs ...Appellants

Vs

Baldev Singh and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gurcharan Dass, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.5629-C of 2017

For the reasons stated in the application, delay of 1104 days in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.5630-C of 2017

The application for impleading the legal representatives of deceased Sohan Devi-appellant No.3(i) and Tara Chand-appellant No.6 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the present appeal.

RSA No.2308 of 2017

The present regular second appeal is directed against the concurrent finding of fact whereby suit of the plaintiff seeking following relief, has been dismissed.

*“Suit for grant of decree for possession of one plot
No.18 being 400 sq. yards shown red in the plan
bounded as under:-*

East: Plot No.7 in possession of Samundha Monga measuring 80 ft.

West: Road 24 ft. wide measuring 80 ft.

North: previously park at present vegetable market measuring 45 ft.

South: Alleged road is demarcated by Rehabilitation Department but ownership of plaintiffs, was demarcated by the defendants No.2 to 5 against the approved Krishna Nagar, Part-II Town Planning Scheme, Ludhiana which is the revenue plot No.222 and 223 out of Khasra No.6144/964 etc. and 6145/964 etc. as entered in Khewat No.681 etc. and Khatauni No.887 etc. vide jamabandi for the year 1969-70 as well as 1974-75 situated in revenue estate of Mohal Bhagat, Tehsil and District Ludhiana at present Mohalla Dayal Nagar, Ludhiana by declaring the sale deed cum conveyance deed though alleged public auction dated 3.3.1981 executed by defendants No.2 to 5 in favour of defendant No.1 as illegal and void and not binding against the plaintiffs.

And for grant of a decree for mandatory injunction directing defendant No.1 to remove malba of the over structure and boundary wall from the property in suit.

In the alternative directing the defendants No.2 to 5 to transfer the same at the payment of cost price of ₹22,500/- at which it was transferred to defendant No.1

without prejudice to the result of civil litigation pending between the plaintiffs and defendants No.2 to 5 on the basis of long possession under the provisions of Punjab Package Deal Property Act, through a consequential relief of mandatory injunction on the basis of documentary as well as oral evidence.”

It is matter of record that plaintiff vide Ex.P37 had also filed civil suit seeking following relief:-

“Suit for declaration to this effect that mutation No.16061 mentioned on 16.6.86 in village Mohal Baghat Tehsil and District Ludhiana changing the entry of ownership as well as the entry of possession from the name of plaintiffs in favour of defendant No.1 without taking physical possession on the basis of any legal and valid order from a competent court or authority is illegal, null and void and is not binding against the plaintiffs.

Also

a declaration to this effect that entry and action taken under Waqiyati No.344 dated 25.12.70 is a nullity in the eyes of law which was entered and effected in the revenue record on the basis of a wrong fact against the verdict existing in the judgment dated 21.12.70 decided by the Collector, Ludhiana.

Also

a decree for mandatory injunction directing the

defendants to restore the previous entry of ownership as well as entry in the column of possession and it existed before 25.12.70 and 16.6.86

Also

for the grant of decree for permanent injunction restraining the defendants not to interfere or to dispossess the plaintiffs or their assignees without due process of law from the property in dispute on the basis of illegal and wrong entry of Mutation No.16061 alleged to be sanctioned on 16.6.86 on the basis of documentary as well as oral evidence.”

Against the aforementioned judgment and decree, RSA No.1724 of 1986 was preferred and the same has been dismissed by this Court vide order dated 08.01.2019 holding that the plaintiff claimed ownership by long and settled possession but also admitted the nature and the property being evacuee. The suit under the provisions of the Act was not maintainable. The present suit is also pertaining to some old khasra No.964 as new khasra No.6144/964 and 6145/964 for claiming possession of 400 sq. yards. The suit for possession would only proceed on title, which has not seen light of the day. The suit was filed in the year 1988 and it is matter of record that plaintiff had challenged the auction of the suit property before the Chief Settlement Commissioner and the appeal preferred by the plaintiff was dismissed vide order dated 17.02.1986 but filed the suit for possession in the year 1988. In the absence of any title, relief of possession cannot be granted and rightly rejected by the Courts

below.

In view of the such circumstances, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 07, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No