

RSA Nos.6218 and 6219 of 2016 (O&M)

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

Date of decision : 29.04.2019

1. RSA-6218-2016 (O&M)

Narinder Singh and another

... Appellants

Versus

Balwinder Singh and others

... Respondents

2. RSA-6219-2016 (O&M)

Narinder Singh and another

... Appellants

Versus

Balwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jitender Singla, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM-16347-C-2016 IN RSA-6219-2016

For the reasons stated in the application, which is supported by
an affidavit, delay of 1 day in filing the appeal is condoned.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of two regular second appeals,
aforementioned, arising out of the decretal of the Civil Suit No.32 dated
12.03.2013 titled as “Balwinder Singh and others V/s Narinder Singh and
another” and dismissal of the counter claim preferred by the appellants-
defendants.

The respondents-plaintiffs sought the injunction against the

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appellants-defendants of forcible interference and dispossession of land measuring 1 kanal comprised in khewat/khatauni No.318/416 Khasra No.161//82/0-9, 161//83/0-11 situated in the revenue estate of village Dhadrian, District Sangrur. It was alleged that neither the defendants were co-sharer nor in possession of any part of the suit property or even any part of Khewat No.316. Earlier an attempt was made by the defendants to dispossess, resulting into, filing of the suit bearing No.49 dated 05.03.2011. The defendants on 13.03.2012 suffered a statement and the suit, was, thereafter, withdrawn, but the threat perception of dispossession, again surfaced, a cause of action accrued to file the suit.

The appellants-defendants opposed the suit and alleged that they along with respective families had been living in the constructed houses, which was built since long in the property in dispute. As per *Bahi* entry, their great grandfather, Takhat Singh, took the exchange of agricultural land measuring 9 marlas of *abadi* bearing Khasra No.161/82 from Shingara Singh son of Uttam Singh and thereafter, Takhat Singh gave the *abadi* land to his son Darshan Singh and also installed the electric connection.

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

1. *Whether the plaintiff is entitled for the permanent injunction as prayed for? OPD*
2. *Whether the present suit is not maintainable in the present form? OPD*
3. *Whether the plaintiff has no cause of action to file the present suit? OPD*
4. *Whether plaintiffs have not come to the court with clean hands? OPD*

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5. Whether counter claimants are entitled for permanent injunction, as prayed for? OP (Counter Claimants).

6. Relief.

The plaintiffs in support of the pleadings, brought on record jamabandi for the year 2008-09 (Ex.P1), Khasra girdawari for the year 2011-12 of Village Dhadrian (Ex.P2), Attested copy of khasra girdawari of year 2011-12 (Ex.P3), certified photocopy of plaint of previous suit dated 04.03.2011 (Ex.P4), certified copy of written statement of the previous suit (Ex.P5) as well as many other documents (Ex.P6, Ex.P7, Mark A to Mark F). On the other hands, the defendants tendered in evidence Ex.D1 to Ex.D15 including demarcation report (Ex.D12) and inspection report of the Local Commissioner (Ex.D10).

The trial Court decreed the suit and dismissed the counter claim and two appeals were preferred before the lower Appellate Court, which were also dismissed.

Mr. Singla, learned counsel appearing on behalf of the appellants-defendants submitted that the Courts below have erroneously rejected the demarcation report of September 2014, on the premise that it was done, in the absence of the plaintiffs, whereas the opening line of the demarcation report revealed, that it was conducted on the request of the respondents-plaintiffs. Owing to the interim order dated 21.05.2013 of the trial Court, the SDO to carry out inspection and both the demarcation report and the report of SDO, revealed not only the possession of the defendants, but construction of houses with *pacca* bricks and cement, over Khasra No.161//82/0-9. He confined his grievance to the aforementioned khasra number. The *bahi* entry had also been proved in accordance with law, but in the absence of the revenue record, the Courts below erroneously rejected

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the counter-claim. As per the implied conduct of the parties, the long possession was never disturbed. The filing of the suit was nothing, but an act of aggrandizement.

I have heard learned counsel for the appellants-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Singla, for, jamabandis and khasra girdawaris, noticed above, reflected the exclusive possession of the plaintiffs and not of the defendants. Ex.D10 did not reflect any khasra number, whereas demarcation report (Ex.D12) has not been proved in accordance with law as it was not on the basis of the order, whereby the appellants can take the benefit of Sub-rule 2 of Rule 10 of Order 26 of the Code of Civil Procedure and rightly so, has been discarded. In the absence of direct and cogent evidence, which carried presumption of truth, the defendants failed to belie the case of the plaintiffs, thus, the Courts below have rightly decreed the suit by rejecting the counter-claim of the appellants-defendants.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Singla, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, both the second appeals are dismissed.

29.04.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**