

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4288 of 2018 (O&M)
Date of Decision : 01.10.2019

Mohinder Pal and another

.....Appellants

Versus

Jaspal Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Navjot Singh, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 24.12.2015, for, even the appeal preferred against the said decree failed and was dismissed on 30.10.2017, the defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff Jaspal Kaur prayed for a decree for injunction restraining the defendants from excavating earth and changing the nature and identity of the suit land and from encroaching and raising construction over any specific portion of the suit property.

In brief, her case was that the defendants happened to be the owners in possession of the suit property which they sold to Seema and Urmila Devi, vide three sale deeds dated 03.12.2007. Said Seema and Urmila Devi in turn sold the suit property to the plaintiff pursuant to a sale deed dated 05.07.2012, and delivered the possession to the plaintiff. For,

the defendants had no concern therewith, thus the suit.

In defence, the defendants pleaded inter alia that they were the owners in possession of the suit property. The sale deed pursuant where to plaintiff alleged to have acquired title and entered possession of the suit land was denied. Accordingly, they prayed for dismissal of the suit.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the jamabandi for the year 2006-07 (Ex.P2) showed that defendants were the owners in possession of the suit property. However, as indicated in the said jamabandi itself, the suit property was mutated in the name of Seema and Urmila Devi. No evidence was led by the defendants to the contrary and, therefore, the presumption of truth attached to the jamabandi Ex.P2 remained un-rebutted. Subsequently, vide sale deed dated 05.07.2012, said Seema and Urmila Devi further sold the suit property to the plaintiff. Entry in this regard is duly reflected in the jamabandi Ex.P2. To prove that plaintiff had indeed acquired title qua the suit property pursuant to the sale deed dated 05.07.2012, plaintiff examined Jarnail Singh PW1 and Harjit Singh PW2, who testified in their deposition the execution of the said sale deed. Hari Kishan Agnihotri PW3, who scribed the sale deeds, also corroborated the claim of the plaintiff. At any rate defendant-Mohinder Pal (DW-1) conceded in his cross examination that both the parties were co-owners in the suit property. Jamabandi Ex.P2 clearly showed that the defendants were co-owners in some khasra numbers, in fact the evidence on record revealed that the defendants had not sold their entire share in

khasra numbers 27//1/2 and 10/2, hence, they still had some share left in the said khasra numbers. Even if, that was so, the defendants could not excavate earth and raise construction upon the joint land changing its nature and character to detriment of the other co-owners. In so far as the land comprised in other khasra numbers qua which the defendants had no right, title or interest, they in any case could neither encroach nor excavate earth therefrom. That being so, the only and the inevitable conclusions the courts could reach: the plaintiff was entitled to the injunction prayed for.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent finding recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

01.10.2019

*Manoj Bhutani***(ARUN PALLI)**
JUDGEWhether speaking/reasoned
Whether reportableYes/No
Yes/No