

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5723 of 2017 (O&M)
Date of Decision: May 09, 2019

Kalu Ram

...Appellant

Versus

Ved Parkash & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Ms.Kiranjeet Kaur, Advocate for
Mr. H.S.Jakhal, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal, at the instance of the appellant-defendant, is directed against the concurrent findings of fact, whereby the suit of the respondent-plaintiffs for simpliciter injunction qua forcible dispossession, has been decreed.

Relief of injunction was sought on the premise that the plaintiffs were owners in possession of land measuring 3 kanals, whereas the defendant was totally stranger. Defendant, being a resourceful person, repeatedly extended threats of forcible dispossession.

Defendant appeared and raised the objections qua maintainability and not approaching the court with clean hands. It was stated that the plaintiffs were not owners of the property and as per the jamabandi for the year 2009-2010, plaintiffs along with defendant and 22 other persons were reflected as co-sharers in Rect. No.51, Killa No. 17(8-0),

Khewat No.608. Plaintiffs filed five different applications for correction of

the khasra girdawaries regarding Khewat No.608, 607, 50, 886/804 and 606/656, but the plaintiffs were not co-sharers in Khewat No.606/556, whereas it was the defendant who was in possession and sown his crop and as well as cotton crop. The proceedings of the revenue court have been assailed by filing revision before the Financial Commissioner Revenue, Punjab, which is still pending.

Plaintiffs examined three witnesses and brought on record documents Ex.P1 to Ex.P5, i.e., jamabandies, khasra girdawaries and also brought on record an order dated 02.11.2012 of mode of partition Ex.PX and site plan Ex.PY. The defendant rebutted the aforementioned evidence by examining four witnesses and placing on record the sale deed dated 10.03.2004 as Ex.DW3/B, certified copy of the order dated 14.08.2013 Ex.D1, site plan Ex.D2, copy of appeal Ex.D3 and copies of partition applications Ex.D4 and Ex.D5.

Ms. Kiranjeet Kaur Advocate for Mr. Harpreet Singh Jakhal, learned counsel appearing on behalf of the appellant-defendant submitted that all the documents, including the contents of the sale deed, revealed that it was a different khewat number, i.e., 606 and, therefore, the injunction could not have been granted. Revision petition before the FCR, Punjab is still pending. The courts below ought to have adjourned the suit with regard to the injunction. The suit in the absence of exclusive possession was not maintainable.

I have heard the learned counsel for the appellant-defendant and appraised the paper book.

Applications for partition Ex.D4 and Ex.D5 include the khasra numbers of the property in dispute, therefore, there is no truthfulness in the

submission that the khewat and the khasra numbers were different. Sale deed Ex.DW3/B do not contain the rectangle and khasra numbers of the said land and, therefore, a presumption can be drawn of the joint ownership. A person who is in possession cannot be dispossessed and the injunction qua forcible dispossession is most innocuous and can always be looked into after the final adjudication of the revision petition, for, as of today, as per the mode of partition Ex.PX and site plan Ex.PY, the plaintiffs are found to be in possession.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact, which are based upon appreciation of oral and documentary evidence. No Substantial Question of law arises for determination by this Court. Resultantly, the appeal is dismissed.

May 09, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No