

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

RSA No. 5542 of 2018(O&M)

Date of decision: 25.7.2019

Narender Singh and another

.....Appellants

VERSUS

Ran Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Tripathi, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the defendants including appellants from interfering, grabbing, encroaching upon the suit property, detailed in para 1 of the plaint with prayer that if during pendency of suit, defendants succeed in encroaching upon any portion of suit land, a decree of mandatory injunction may be passed, was decided by the trial Court vide judgment and decree dated 30.08.2014, to the following effect:-

“The defendants are perpetually restrained from interfering and encroaching over the property comprised in khewat No.182, khatoni No.216, Rect. No.83, 4 kanal 5 marla situated in revenue estate Dharan, Tehsil Bawal, District Rewari. The defendants shall also dismantle the construction raised over the aforementioned property during the pendency of suit and shall handover the vacant possession to the plaintiff...”

The judgment and decree passed by the trial Court resulted in filing of two appeals CA No.89 of 2014 titled Ran Singh and another Vs. Mithan Singh and others and CA No.124 of 2014 Narinder Singh and another (appellants herein) Vs. Ran Singh and another. Both the appeals were decided vide common judgment and decree dated 29.07.2017 by the Additional District Judge, Rewari. The appeal preferred by the plaintiffs/respondents was allowed and judgment and decree passed by the trial Court was modified with directions to the defendants to restore the wall to its original position within three months at their own expenses whereas the other appeal filed by defendants No.4 and 5 (appellants herein) was dismissed.

Counsel for the appellants would argue that suit land was owned by predecessor in interest of respondents/plaintiffs and the same was orally gifted in favour of Jawahar Lal, Shiv Lal and Fakir Chand and their names are recorded in the column of cultivation in the revenue records. It is further submitted that the respondents/plaintiffs filed a suit for declaration seeking correction of entries in the revenue records but in the said case the appellants were not impleaded as a party and the suit was decreed ex parte. It is further submitted that findings recorded by the Courts either in respect of possession of suit land by the respondents/plaintiffs or directions issued by the trial Court for removing the construction raised over the suit property and handing over the vacant possession to the plaintiffs or restoration of wall by the Court in appeal suffer from an error and is the result of mis-reading of evidence, therefore, cannot be allowed to sustain. It is vehemently argued that as a matter of

fact, the appellants are in possession of suit property but their plea in this regard has wrongly been rejected by the Courts.

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned.

Be that as it may, it is undisputed position of the case that suit land was previously owned by predecessor in interest of the respondents/plaintiffs. The defendants including the appellants have raised a plea that suit land was orally gifted by predecessor in interest of plaintiffs in favour of Jawahar Lal, Shiv Lal and Fakir Chand whose names are recorded in the column of cultivation in the revenue records. Counsel for the appellants has fairly conceded that the respondents/plaintiffs filed a suit for declaration seeking correction of revenue entries recording possession of Jawahar Lal, Shiv Lal and Fakir Chand and the said suit was decreed ex parte. There is nothing on record suggestive of the fact that Jawahar Lal etc. challenged the decree passed in the suit for declaration in respect of correction of revenue entries. The Courts, on a detailed consideration of materials on record, arrived at a conclusion that suit land is in possession of the respondents/plaintiffs and during pendency of suit, construction was raised by the appellants and they have been directed to hand over vacant possession after removing construction while accepting prayer of the respondents/plaintiffs for grant of mandatory injunction. The Court in appeal has allowed further relief directing the appellants to restore the wall at their own expenses which is held to be demolished during pendency of the suit proceedings.

Counsel for the appellants has read findings of the trial Court recorded in para 10 and 11 in extenso but failed to point out if the same are

not based upon materials on record or is result of mis-reading of testimonies of the witnesses examined by the defendants. As per the settled position in law, concurrent findings recorded by the Courts on factual dispute cannot be intervened on re-appreciation of evidence merely because a different view is possible. The second appeal can be admitted for hearing only if it raises a question of law that needs determination after notice to the contesting party. In the given scenario, I do not find any reason to interfere in the consistent findings recorded by the Courts.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

JULY 25, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no