

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6131 of 2017 (O&M)

Date of Decision: January 25, 2019

Jangir Singh & others

...Appellants

Versus

Kartar Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Ms. Prabhjot Kaur, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM No.16014-C & 16015-C of 2017

For the reasons mentioned in the applications, which are supported by affidavits, delay of 78 days in filing and 215 days in re-filing the appeal is condoned.

Applications stand disposed of.

RSA No.6131 of 2017

Appellant-defendants have not been successful in defending the suit preferred by the respondent-plaintiffs for permanent injunction seeking restraint qua forcible interference and dispossession.

Plaintiffs asserted to be in possession of the suit land being the son of Kakka Singh, who alleged to have executed a Will dated 24.03.2004, whereas the defendants are grand children of Kakka Singh.

Defendants denied the possession of the plaintiffs and stated that Kakka Singh had mortgaged the land measuring 40 kanals 13 marlas in

favour of Hansa Singh, who further mortgaged half of the land in favour of Jangir Singh and Chhinder Singh and, therefore, did not have the cause of action.

Ms. Prabhjot Kaur, learned counsel appearing on behalf of the appellant-defendants submitted that the plaintiffs have failed to prove the possession of the suit property and, therefore, the injunction in these circumstances could not have been granted, particularly when the property was mortgaged. No doubt, Jangir Singh and Chhinder Singh, defendant Nos. 1 and 2 were convicted and sentenced to two years imprisonment, but that could not be a ground to belie the stand. It was further submitted that the land belongs to Provincial Government.

I have heard the learned counsel for the appellant-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendants as their own witness DW-3 Hansa Singh denied to have taken the land on mortgage. The khasra girdawaries reflected in the names of the plaintiffs. For the purpose of granting injunction, even if the parties to the lis are not owners much less the plaintiffs, possessory rights/possession can always be protected through injunction by dispossession in accordance with law. This is what has been held by Hon'ble the Supreme Court in **Rame Gowda (D) by L.Rs Versus M.Varabappa Naidu (D) by L.Rs & another, 2004 (1) SCC 769.**

For the reasons mentioned above, I do not subscribe to the arguments of the learned counsel to form a different opinion than the one arrived at. No ground for interference is made out, much less involvement of any substantial question of law.

Resultantly, the appeal is dismissed.

January 25, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No