

RSA No. 5767 of 2018 (O&M)

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

**RSA No. 5767 of 2018 (O&M)
Date of decision: 19.11.2019**

Sewa Singh (now deceased) through his LRs

... Appellant

Versus

Mahabir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Madan Pal, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 23.1.2015, and as even the appeal preferred against the said decree failed and was dismissed on 28.5.2018, the appellants (legal heirs of the plaintiff) 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 prayed for injunction restraining the defendants from interfering in his possession or causing his dispossession from the suit land. In brief, the case set out by him was that parties were related *inter se* and the plaintiff happened to be the proprietor of Kasba Karnal and was in exclusive possession of a land measuring 5 bighas 13 biswas out of total land measuring 29 bighas 7 biswas, comprised in khewat No. 1867 min, khatoni No. 3056/4, khasra No. 13037/2454 min, as depicted in the cause title of the

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plaint. He constructed a building over the suit land wherein he was running a poultry farm. Besides that, there existed a kotha and a tubewell with electricity connection in the name of the plaintiff and in the remaining land, he had sown jawar crop. Late Mohinder Singh, father of defendant No.3, happened to be a Patwari and now Ram Sarup (defendant No.5) was posted as Patwari in the revenue department and by abusing their powers, they altered the entries in khasra girdawaris and incorporated the name of Dharam Singh, father of the defendants. Whereafter, plaintiff moved an application before the Assistant Collector 2nd Grade, to rectify the revenue record, which was still pending. But, as defendants attempted to dispossess the plaintiff, thus the suit.

In the written statement filed by the defendants, it was pleaded, *inter alia*, that pedigree table relied upon by the plaintiff was incomplete. Further, defendants alone were co-sharers in the suit land. Whereas, plaintiff had no right, title or interest therein. The poultry farm depicted in the site plan was not being run by the plaintiff and no such building was in existence at the site. Kotha and tubewell shown in the site plan was a part and parcel of the land owned by defendants comprised in khasra No. 2454 of the abovesaid khewat that was jointly owned by plaintiff and father of the defendants, and had not been partitioned. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that claim of the plaintiff was that he was in actual physical possession of the land comprised in khasra No. 13037/2454. And, to prove his claim, he examined as many as nine witnesses. Raj Kumar (PW1), LDC, office of UHBVN, appeared along with

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records pertaining to the tubewell connection No. AP/05/1043 and deposed that though the said connection existed in the name of the plaintiff, but his father's name was not mentioned anywhere in the records of the department. However, he conceded in his cross-examination that he could not tell if the said tubewell existed in khasra No. 2454 or in any other khasra number. Not just that, he admitted that no record was available to show as to in which khasra number, the plaintiff (Sewa Singh) had the tubewell connection. Thus, all what could be deciphered from the testimony of the said witness was that though connection No. AP/05/1043 was recorded in the name of the plaintiff, but nothing existed on record to show as to in which khasra number the said connection was installed in. Likewise, Shashi Kant Sharma (PW2), draftsman, proved that site plan. However, he admitted that he visited the plot on instructions of the plaintiff, and although he had mentioned the khasra numbers after looking at the site plan (Exp4), but neither did he examine the revenue records qua the said khasra numbers, nor he was aware as to in which khasra number, the land qua which he had prepared the site plan was comprised in. Naveen Bansal (PW3), who was appointed as Local Commissioner, furnished his report (Ex.PW3/A), memo of appearance (Ex. PW3/B) and site plan (Ex.PW3/C). However, his report revealed that there were two kaccha rooms in existence at the spot, a grass cutting machine and khor for feeding cattle. Significantly, nothing as such was mentioned in the plaint, and rather the case of the plaintiff was that he was running a poultry farm at the site, but pleadings in this regard were deficient. Undoubtedly, Rajesh Kumar (PW4) had placed on record certain photographs but that too could not show if the suit land was comprised in khasra No. 2454. Surjit (PW6), who happened to be nephew of the plaintiff, supported his claim, but

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conceded that in the jamabandi, pertaining to khasra No. 2454, name of the Sewa Singh as co-sharer did not exist. Further, plaintiff (PW8) had conceded that he never got the suit property demarcated. Not just that, his application seeking rectification of khasra girdawaris was dismissed by the Assistant Collector 2nd Grade. His appeal too met the same fate. Therefore, though the plaintiff claimed to be in possession of khasra No. 13037/2454, situated at Kasba Karnal, which happened to be shamlat, but he apparently failed to prove his claim. On the contrary, defendants placed on record jamabandi (Ex.D3), which reflected that defendants were co-sharers in the land comprised in khasra No. 2454. Thus, in the given situation, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed for lack of evidence.

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

(ARUN PALLI)
JUDGE

November 19, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO