

RSA No. 5870 of 2018 (O&M)

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

**RSA No. 5870 of 2018 (O&M)
Date of decision: 23.9.2019**

Lakhwinder Singh

... Appellant

Versus

Sukhwinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Harchand Singh Batth, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiffs was decreed by the trial court, vide judgment and decree dated 8.11.2017, and as even the appeal preferred by appellant-defendant No.2 against the said decree failed and was dismissed on 8.8.2018, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a decree of injunction, restraining the defendants from causing interference in their peaceful possession over a land measuring 03 kanals 12 marlas bearing khasra No. 31//11/2 [2-12] 31//20/1 [1-0], khata khatauni No. 165/588/62, as entered in the jamabandi for the year 2009-10, situated in village Kotla Doom, Tehsil Ajnala, District Amritsar, except by following the due process of law.

In brief, the case set out by the plaintiffs was that suit land was earlier in possession of the husband of plaintiff No.1 and father of plaintiff

RSA No. 5870 of 2018 (O&M)

No.2, namely, Saun Singh, and post his death, they continued to be in possession of the suit property. In fact, plaintiffs are in actual physical possession of the suit property, pursuant to a private partition and a family arrangement amongst the co-sharers. And, even though the defendants have no right, title or interest in the suit property, yet they claim to have purchased the same from one of the co-sharers and without getting their share partitioned, they sought to dispossess the plaintiffs. Thus, the suit.

Defendant No.2, in defence, pleaded, *inter alia*, that plaintiffs were not in possession of the suit land, and rather, he was in exclusive possession thereof. In fact, the proceedings for correction of khasra girdawari, which was wrongly entered in the name of predecessors of the plaintiffs, were pending before Tehsildar, Ajnala, and eventually pursuant to the order dated 20.11.2015, khasra girdawaris were rectified in the name of defendant No.2. Thus, he being in possession of the suit land, 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 jamabandi for the year 2009-10 (Ex. P1), revealed that plaintiffs were in actual physical and cultivating possession of the suit land. Further, even in the khasra girdawari from Sauni 2014 to Hari 2015 (Ex.P3), names of the plaintiffs alone were reflected in the column of cultivation. As per the revenue records, defendant No.2 was never in occupation of the suit property. No doubt, defendant relied upon the khasra girdawari of Sauni 2015 (Ex.D3), recorded pursuant to the order passed by Tehsildar Ajnala, dated 20.11.2015, to claim possession over the suit property. However, the said order was passed post institution of the present suit on 16.10.2015. Hence, the suit filed by the

RSA No. 5870 of 2018 (O&M)

plaintiffs being prior in time than the order passed by the Tehsildar, the correction in the khasra girdawari of Sauni 2015 (Ex.D3) was inconsequential.

The court was required to determine, as to which of the parties was in possession in respect to the date of filing of the suit. The evidence on record, i.e. jamabandis and khasra girdawaris, showed plaintiffs were in actual physical possession of the suit property at the time of institution of the suit. In fact, the revenue authorities ought not to have changed the entries in the revenue records till the final decision by the civil court. Even otherwise, no cogent and independent evidence was brought on record by the defendant to prove that possession of the suit land was transferred in his favour. On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

Thus, 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

September 23, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO