

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6527 of 2018

Date of Decision: 05.07.2019

Bhagwan Singh

.....Appellant

Vs.

Tarsem Singh and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.D.S.Randhawa, Advocate, for the appellant.

DR. RAVI RANJAN, J. (Oral Judgment)

This matter was heard earlier by this Court on 17.12.2018 and on that day notice of motion was issued and lower Court records were also requisitioned. Notice was also issued in the matter of stay of execution case also, however, no interim relief was granted. It appears that subsequently CM No.8379-C-2019 has been filed by the appellant for preponement of the date of hearing which was allowed by a Co-ordinate Bench of this Court on 03.07.2019. Despite the fact that notice issued to the respondents was served upon respondent No.1 but could not be served upon respondent No.2 who was reported to have died, no application for bringing on record his legal representatives has been filed by the appellant. However, again a direction was given by the Co-ordinate Bench vide the order 03.07.2019 to effect the service through *dasti* process. The office has pointed out that *dasti* notice issued to the respondent has not been received back either served or otherwise. Still learned counsel for the appellant insists for hearing of the appeal as now lower Court records are available and since the executing Court is proceeding with the matter and warrant of possession was

already issued and subsequently an order has been passed by the executing Court to get the possession delivered to the plaintiff with the help of the police.

The order the executing Court dated 28.05.2019 speaks in so many words regarding the conduct of Judgment-Debtor/appellant. The Bailiff has reported that the Judgment-Debtor/appellant has resisted the execution through the process of Court by creating unlawful atmosphere at the spot by gathering 500/600 persons to halt the execution proceedings. The Court has also stated that few persons had come outside the Court room representing them to be members of Kissan Union and started showing resentment and protest against the order of issuance of warrants of possession. The executing Court was apprehending law and order situation either in the Court premises or near the residence of the concerned Judicial Officer.

However, it would not be proper to deal with the aforesaid issue in this second appeal as the same is being dealt with by the executing Court itself.

In the aforesaid background of the matter, I have heard the appellants and perused the lower Court records of this case.

Briefly stated, facts of the case are that respondent-plaintiff instituted suit for possession of the property described in the plaint and has mentioned in the *Jamabandi* for the year 2007-08, situated at Village Kokari Kalan Sumali, District Moga, consisting of three rooms along with a verandah and toilet, constructed over the suit plot and shown in the red colour marked as A,B,C, D in the site plan annexed with the plaint.

Plaintiff has averred that he is owner of the suit property having

No.3335. He purchased it from the Central Government which had handed over the possession of the land to the plaintiff and accordingly, *Jamabandi* which was earlier running in the name of Central Government was also modified as the plaintiff's name was entered in the same as owner of the property. It has further been stated that the plaintiff gave possession of the suit property to the defendants in the year 2000 and licensed them to remain in possession till the year 2010. However, at the same time, it is also stated that defendants were paying a sum of Rs.1200/- per month as rent to the plaintiff but no rent deed was executed between the parties. In the month of December 2010, license of defendants to remain in possession of the suit property expired and they were requested to vacate the suit property but the defendants sought some time for the same. Since the relationship between the parties was cordial, plaintiff agreed to the same. But even after lapse of three months, when the defendants did not vacate the suit property and started threatening the plaintiff with dire consequences, their possession became unauthorized in view of expiry of the license and hence, the suit was filed for recovery of possession.

The defendant No.1 contested the claim by filing the written statement denying the purchase of the property by the plaintiff in the year 1991 through the alleged conveyance deed rather they came with the story that defendant along with his brothers Gurdev Singh and Gurcharan Singh are the owner in possession of the suit property and residing in the same since 1952, the land in dispute having been allotted to father of defendants, v.i.z., Sohan Singh by the Central Government.

However, the defendant No.2, the brother of defendant No.1, did

not contest the claim of the plaintiff and was proceeded *ex-parte*. On the

basis of the rival pleadings, the trial Court framed following issues:-

- (I). Whether plaintiff is entitled to the relief of possession, as prayed for? OPP.
- (II) Whether suit is not maintainable in the present form? OPD.
- (III). Whether suit is barred by limitation?OPD.
- (IV) Whether plaintiff has no cause of action to file the present suit? OPD
- (V) Relief.

The plaintiff, in order to prove his case, has examined Jaspal Singh (Patwari) as PW-1, Balwinder Singh, HRA, DC Office Moga as PW-2, Baljinder Singh, Draftsman as PW-5, Hira Lal Goyal as PW-6, Jagir Singh as PW-7 and himself as PW-3.

On the other hand, the defendant Bhagwan Singh, examined himself as DW-1.

After consideration of the rival contention and on perusal of materials on record, the trial Court decreed the suit vide the judgment and decree dated 04.03.2016. The judgment and decree was impugned before the first appellate Court, however, the first appeal was also dismissed vide impugned judgment and decree dated 05.09.2018.

The judgments and decrees of both the Courts below have been put to challenge in this Regular Second Appeal by the defendant No.1-appellant.

In the aforesaid background of factual matrix, I have heard learned counsel for the appellant and have perused the records of this case.

Learned counsel appearing for the defendant No.1/appellant vehemently argued that the suit land was allotted to Sohan Singh, i.e., father of the defendants, by the Central Government which was owner in

the property. The first appellate Court has taken notice that the lower Court records reveal that on 19.01.2016, learned counsel for the defendants had tendered in evidence xerox copy of the conveyance deed dated 24.03.1955 which was marked as Mark-D3/A and translation thereof has been marked as Mark-X, the translation of two pages have been marked as Ex.D3 and site plan as Ex.D4. Reliance has been placed on *Sanad* Mark-D3/A dated 24.03.1995. Its perusal reveals that it pertains to house Nos.495, 496, 497 and 498. As per translation Ex.D3 land comprised in Khasra Nos.56//13/1, 14, 15 and 57//4/5, 7/2, 9/3, 12, 13, 14/1, 20/1 was allotted to Sohan Singh son of Phuman Singh, i.e., father of defendants. However, the first appellate Court has observed that these documents were tendered in evidence by merely making statement. It was so done in order to prevent the said document to be tested on the touchstone of the cross-examination. However, the conveyance deed in favour of the plaintiff reveals that the suit land is measuring 01 Kanal pertaining to Khasra No.720 as per *Jamabandi* for the year 1987-88. Thereafter, mutation was sanctioned in favour of plaintiff on the basis of conveyance deed, i.e., Ex.PW-2/A. As per the said mutation order, ownership and possessory rights in the Khasra No.720 were transferred by the Central Government in favour of plaintiff-Tarsem Singh, which is reflected in the exhibit PW-1/B, i.e., the *Jamabandi* for the year 2007-08. The said land has been depicted to be owned by plaintiff being *gair mumkin* plot. The employee of the relevant department of Central Government, examined as PW-1, has proved the conveyance deed.

On the other hand, nothing could be brought on record showing as to how father of the defendants obtained the possessory and proprietary rights in the year 1952. Even if, it is assumed that there was conveyance

deed in their favour in the year 1955, there is nothing on record to connect the description of the land in the said conveyance deed in favour of the father of the defendants with the land in question pertaining to Khasra No.720 as year 1955 deed is with respect to Khasra No.56 and 57. Even the brother of defendant No.1/appellant, i.e., defendant No.2 Gurdev Singh, who was admittedly alive at the time of institution of suit as has been submitted by learned counsel for the appellant and had died after the trial Court judgment, did not appear before the Court to support the case of the defendant No.1/appellant that property was conveyed by the Central Government in some manner in favour of their father Sohan Singh. Learned counsel for the appellant has vehemently argued that conveyance deed does not disclose the boundary of the proposed transfer. However, the aforesaid submission would not be tenable in view of the fact that plot number has clearly been given which stands demarcated in the survey/revenue records and mutation was already done and *Jamabandi* was created in the name of plaintiff immediately after transfer in his favour. There is no dispute of boundary in this case with the boundary *raiya*t, rather the dispute is as to whether the suit land is owned and possessed by the plaintiff or the defendants. The defendants could not lead any evidence to show that they are actually in possession of the land since the year 1952 as per their averment in the written statement.

Having regards to the discussions made above, this Court is of the opinion that no good ground or substantial question of law could be raised by the appellant in this appeal warranting interference in the impugned judgments and decrees of the Courts below as the issues involved stand

In the result, this appeal, being devoid of any merit, fails and, accordingly, is dismissed.

(DR. RAVI RANJAN)
JUDGE

05.07.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No