

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4876 of 2019 (O&M)
Date of Decision : 29.01.2020

Smt. Sahabo and others

...Appellants

Versus

Pale Ram @ Pali (now deceased) through LRs and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Parveen Kaushik, Advocate
for the appellants.

ALKA SARIN, J

1. By way of the present regular second appeal, the defendant-appellants have challenged the judgment and decrees dated 17.12.2011 and 23.05.2014 passed by both the courts below.

2. In brief, the facts relevant to the present lis are that the plaintiff-respondent No.1 filed a suit for permanent injunction on the averments that the suit land was earlier in cultivating possession of one Mam Chand. The said Mam Chand was cultivating the said land as Mujara-Gair-Maurushi on payment of Chakota Saal Tamam at the rate of ₹22/-. The land was owned by the proprietors of Shamlat Panna Jai Lal of village Parnala. Mam Chand continued to cultivate the land till his death on 27.08.1974. Thereafter, the tenancy rights were inherited by the plaintiff-respondent No.1 and Kundan Lal. Kundan Lal also expired on 26.05.1996 and his tenancy rights were inherited by defendant/respondent

Nos.2 to 4.

3. It was further averred in the plaint that the proprietors of Shamlat Panna Jai Lal claimed that the Shamlat land of Panna Jai Lal had been partitioned and mutation Nos.4244 and 4975 had been sanctioned and on the said basis, the defendant-appellants were claiming that they have been allotted the suit land. The plaintiff-respondent No.1 pleaded that he still continued to be the tenant on the land in dispute having succeeded to the tenancy rights of Late Mam Chand and, therefore, prayed for a decree of permanent injunction restraining the defendant-appellants from dispossessing and interfering with the peaceful possession of the plaintiff-respondent No.1 and defendant-respondent Nos.2 to 4.

4. In the written statement, the defendant-appellants, *inter-alia* contended that the ancestors of the plaintiff-respondent No.1 and defendant/respondent Nos.2 to 4 were never in cultivating possession of the suit property as tenants and that the entire story set up in the plaint was false, fabricated and concocted.

5. It was further the stand taken that the suit land had been partitioned and was allotted to the defendant-appellants and since its partition, they were in possession of the suit property. On the basis of the pleadings and the evidence led by the parties, the trial Court returned a finding that the possession of the plaintiff-respondent No.1 and defendant/respondent Nos.2 to 4 over the suit property was proved by way of the jamabandis, placed on the record as Ex.P-1 to P-9. The trial Court also found that the plaintiff-respondent No.1 and defendant/respondent Nos.2 to 4 were shown in the possession in the Khasra Girdawari Ex.P-10. A further finding was recorded that though the stand of the defendant-appellants was that Ex.D-4 clearly proves their possession over the suit property, however, the said argument was not held tenable

inasmuch as Ex.D-4 i.e. Roznamcha Vakyati only records that ownership rights were given to the defendant-appellants and the possession was not mentioned anywhere in Ex.D-4. It was also found in Ex.D-5 i.e. mutation No.4975, the name of the person in cultivating possession remains the same and only the column of ownership underwent a change.

6. In view of the findings, the trial Court decreed the suit restraining the defendant-appellants from dispossessing the plaintiff-respondent No.1 and defendant-respondent Nos.2 to 4 from the suit property except in accordance with the procedure laid down for the ejectment of tenants under the provisions of Punjab Security of Land Tenures Act, 1953.

7. Aggrieved by the said judgment and decree, the defendant/appellants challenged the same in the lower Appellate Court. However, the lower Appellate Court also found no merit in the arguments raised by the defendants/appellants and affirmed the finding returned by the trial Court. Aggrieved by the said judgment and decrees passed by both the courts below, the defendant-appellants have preferred the present regular second appeal.

8. I have heard the learned counsel for the defendant-appellants. It is contended that the suit had wrongly been decreed by the trial Court and affirmed by the lower Appellate Court inasmuch as the defendant-appellants had been proved to be in possession of the properties on the basis of the Roznamcha Vakyati. It was further argued that since the defendant-appellants were in possession, no injunction could be granted against them. Learned counsel for the defendant-appellants though vehemently contended that the defendant-appellants had been proved to be in possession, was unable to show any document which reflected the

possession of the defendant-appellants over the suit property. Even the Roznamcha Vakyati, Ex.D-4, which has been relied upon by the learned counsel for the defendant-appellants only reflects that the ownership rights were recorded in favour of the defendant-appellants over the suit property and there is no mention whatsoever regarding possession. In fact, the defendant-appellants had miserably failed to produce on record any cogent evidence to establish their possession over the suit property. No other point was urged.

9. In view of the above, I do not find any illegality, infirmity or perversity in the judgment and decrees passed by both the courts below and hence, the present regular second appeal is dismissed.

10. Since the main case has been decided, pending miscellaneous application(s) if any, also stand disposed off.

(ALKA SARIN)
JUDGE

29.01.2020
Manpreet