

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3339 of 2019 (O&M)

Date of Decision: 12.03.2020

Ram Pal

... Appellant(s)

Versus

Smt. Bhaga Bai (now deceased) through her legal heirs and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. Vaibhav Jain, Advocate
for respondents No.1 to 4.

Anil Kshetarpal, J.

Defendant No.2 has filed the present regular second appeal against the concurrent finding of fact arrived at by both the Courts below while decreeing the suit filed by the plaintiffs for grant of relief of permanent injunction. The plaintiffs claimed the property on the basis of a sale deed executed by Nepal Singh, a co-owner in the joint property. Defendant No.1 had filed a previous civil suit bearing No. 389 of 2010 claiming to be in possession of the property which was dismissed by the learned Civil Court on 31.07.2012. Appeal against the judgment and decree was withdrawn by defendant No.1.

The plaintiffs now claim that defendants be restrained from interfering in peaceful cultivating possession of the suit land. Defendant No.1 filed a written statement claiming that Gora Singh and Zora Singh, two

brothers, predecessors-in-interest of defendants No.1 and 2, were in

exclusive possession of the property for the last 40/50 years and the revenue entries have been changed without any notice to them. Defendant No.2 contested the suit by asserting that he is in actual possession of the property in dispute being a co-owner.

Both the courts below, on appreciation of evidence, have found that the plaintiffs are proved to be in possession of the property as held in the judgment and decree dated 31.07.2012 which has become final.

This Court has heard the learned counsel for the parties at length and with their able assistance, gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellant, while referring to Ex.D1, an application filed before the police, has submitted that possession of defendant No.2 is admitted and therefore, the suit filed by the plaintiffs is not maintainable. He further submitted that the entry in the revenue record has been changed in favour of the plaintiffs without any notice.

This Court has considered the submissions, however, finds no substance therein.

Ex.D1 is an application submitted to the police wherein it has been recorded by the plaintiffs that they are cultivating the land and after the decision of the Civil Court in the previous suit, the defendants have entered into possession and police help be provided for restoration thereof. That itself would not be sufficient to hold that the defendants are in possession of the property, particularly when there is a Civil Court decree declaring the plaintiffs to be in possession of the property.

Learned counsel for the appellant has submitted that defendant

defendant No.2 is the son of Gora Singh. The revenue entry was jointly made in favour of brothers Gora Singh and Zora Singh. The decree passed against Zora Singh has become final.

In the end, learned counsel for the appellant submitted that partition proceedings are pending and therefore, both the Courts below have erred in granting decree for permanent injunction.

Learned counsel for respondents No.1 to 4 also admits that such decree passed by the Courts below shall be subject to the result of partition proceedings.

In view therefore, present regular second appeal is disposed of.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

March 12, 2020
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No