In the High Court of Punjab and Haryana at Chandigarh

RSA- 3526 of 2016 (O&M)
Date of Decision:13.2.2020

Rai Sahib Mehta and others

---Appellants

vs.

Uma Mehta and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.S.K.Mahajan, Advocate
for the appellants

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Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent injunction restraining the appellants-defendants from interfering in peaceful possession of the respondents-plaintiffs or dispossessing them forcibly from land measuring 17 kanal 15 marlas, detailed in head note of the plaint, was decreed by the trial court vide decree and judgment dated 10.10.2013 that came to be affirmed in appeal decided by the Additional District Judge, Amritsar.

The case set up by the respondents-plaintiffs is that suit property is joint ownership of parties. In a family settlement, suit property fell to the share of Surinder Mohan, predecessor-in-interest of the plaintiffs. He was in exclusive possession of suit land. Surinder Mohan died in the year 1997. Plaintiffs being Lrs of Surinder Mohan are in exclusive possession as owners of suit land. Khasra girdawaris are in the name of Surinder Mohan who made the suit land fit for cultivation after spending huge amount of money and labour.

The appellants-defendants filed the written statement controverting the allegations with regard to any family settlement or previously Surinder Mohan being in exclusive possession of suit land or the respondents in possession thereof after death of Surinder Mohan. Entries in khasra girdawaris are incorrect as the same are in the name of Surinder Mohan who died in the year 1997. The plaintiffs are residents of Himachal Pradesh since 1990-91 and they never possessed the suit land. Suit land is being cultivated by defendants who were co-sharers in the joint khata.

The trial court framed issues, noticed in para 6 of the judgment of said court. Issue No. 1 relates to possession and reads thus:-

"Whether the plaintiffs are possessing suit land? OPP"

Counsel for the appellants would argue that Sh. Surinder Mohan shifted to Himachal Pradesh in the year 1990-91. Later he died in the year 1997 but khasra girdawaris are continuously recorded in the name of dead person, therefore, the same can not be relied upon. Another submission made by counsel is that the Courts did not correctly appreciate the documents Ex. D1 to D7 produced by the appellants to counter case of the respondents and substantiate their plea in respect of they being in possession of suit land, therefore, the respondents-plaintiffs being not entitle to indulgence of the Court for seeking injunction in respect of possession against their co-sharers. It is further argued that the revenue authorities may not change entries in khasra girdawaris pending question of possession before the civil court but they have jurisdiction to conduct spot inspection to change entries in the khasra girdawari. For this purpose, reliance has been placed upon Division Bench judgment of this Court **Suhag Wanti vs. Commissioner, Patiala Division, Patiala and others 2012 (45) RCR (Civil) 719.**

The whole controversy in the present case revolves around the issue if Sh. Surinder Mohan was in possession of suit land prior to his death in the year 1997 and later the same is in possession of his successors-in-interest (respondents herein).

In para 12 of the judgment of trial court, it has been noticed that appellants-defendants adduced evidence to establish that Rai Sahib Mehta and his family is in cultivating possession of the suit land since 1972 in continuation and without interruption meaning thereby that the appellants sought to establish that they are in possession of suit land even before Sh. Surinder Mohan allegedly shifted to Himachal Pradesh and his death in the year 1997.

In disputably, the entire revenue record prior to 1997 in regard to possession of suit land is in favour of Sh. Surinder Mohan though the entries in khasra girdawaris continued to be recorded in the name of Sh. Surinder Mohan even after his demise in the year 1997. There is no explanation by the appellants that if they were in cultivating possession of suit land since the year 1972 why didn't they file an application for correction of khasra girdawaris during life time of Sh. Surinder Mohan. This silence on the part of appellants speaks volumes to negate their plea that they are in cultivating possession of land in dispute either from 1972 or before institution of the suit in the year 2006. During pendency of the suit, an application was made for correction of khasra girdawaris in the year 2009 and eventually, the appellants were able to manage correction of khasra girdawaris on the basis of some report prepared by revenue authorities in respect of spot inspection. Counsel has not denied that order of correction of khasra girdawri was set aside by the higher authorities in the revenue department and proceedings have been initiated against certain officials of the revenue department for preparing wrong documents and correction of khasra girdawari. As per settled position in law, no weight can be given to correction of khasra girdawari made during pendency of civil suit involving question of possession. As such, the appellants can not derive any advantage to their contention from the documents prepared during pendency of civil suit and marked as Ex. D1 to D7. In the Division Bench judgment **Suhag Wanti's case (supra),** it has been held that revenue authority has jurisdiction to conduct such spot inspection during pendency of civil suit involving question of title and possession but such entry is not binding on civil court and any change in possession is to be proved by independent material that may be placed before the court. Counsel has failed to point out any materials elicited in cross examination of Vishnu plaintiff No. 2 or evidence adduced by appellants-defendants in order to establish their plea qua possession of suit land, contrary to what has been asserted by respondents-plaintiffs. In this view of the matter, the appellants can not derive any advantage to their contention from any such spot inspection made by revenue authorities. In view of the above, I do not find an error much less illegality in the judgments impugned that would call for intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

13.2.2020
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No