

S.No.101

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

RSA No.5231 of 2016 (O&M)

Date of Decision:26.02.2020

Soni Ram and others

.....Appellants

Vs.

The District Collector, Kurukshetra and othersRespondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. V.B. Aggarwal, Advocate for the appellants.

Rajbir Sehrawat, J.(Oral)

This is the second appeal filed by the plaintiffs No.6 and 7 in the original suit, challenging the concurrent judgments and decrees passed by the Courts below, whereby the suit filed by the plaintiffs was dismissed.

The parties herein are referred to as the plaintiffs and defendants as described in the original suit.

The brief facts, giving rise to the present appeal are that the suit was filed claiming therein that previously defendants No.4 to 11 were the owners in possession of the suit land fully described in the plaint and measuring 317 kanals 1 marla situated within the revenue estate of Village Salpani Khurd, Tehsil Thanesar, District Kurukshetra. However, the said land was declared as surplus and the same was allotted by the State Government to the plaintiffs. Accordingly, in the year 1955, the plaintiffs came in cultivating possession of the suit land. After the death of the allottees, their succession-in-interest; whose names were mentioned in the Memo of Parties in the plaint; came into cultivating possession of the same. The defendants No.4 to 11, who were the original owners of the land, had left the village and, thereafter, their whereabouts were not known to the plaintiffs and to other defendants. However, some other persons,

representing as Power of Attorney holders of defendants No.4 to 11 had executed the sale deed dated 20.08.1970 in favour of defendants No.12 to 36. As such, the sale deed is result of fraud. Accordingly, it was prayed in the suit that all the revenue entries, showing the defendants No.12 to 36 as owner in possession were wrong, illegal, null and void. Hence, a declaration to that effect was sought. It was further pleaded that since the plaintiffs were recorded as being in cultivating possession of the suit land as "Gair Marusian" w.e.f. 1955, therefore, their possession always remained open, hostile and uninterrupted qua the defendants No.4 to 11. As such, the order dated 02.07.1988 passed by Assistant Collector Agrarian, whereby the plaintiffs have been dispossessed from the suit land, was also only an illegal paper transaction. Accordingly, the declaration of the said order as null and void; was also prayed.

This stand of the plaintiffs was contested by the defendants. It was pleaded that the defendants had rightly purchased the suit property, through a registered sale deed. Therefore, their names have rightly been entered in the revenue record as owners in possession. It was specifically denied by the defendants that the land was ever declared as surplus or that the same was ever allotted to the plaintiffs for utilisation of the surplus land. Any kind of fraud in the purchase of the land was also denied by the defendants. Hence, it was prayed that the suit filed by the plaintiffs be dismissed.

The parties led their respective evidence to prove their assertions. After considering the evidence led by the parties, the trial Court dismissed the suit filed by the plaintiffs. Aggrieved against the judgment

and decree passed by the trial Court, the plaintiffs preferred appeal before the lower Appellate Court. However, the said appeal was also dismissed by the lower Appellate Court. Hence, the present appeal has been filed on behalf of the persons, who were plaintiffs No.6 and 7 in the plaint. However, the other plaintiffs have not preferred any appeal.

While arguing the case, learned counsel for the appellant/plaintiffs have submitted that the Courts below have not proceeded with the decision of appeal in accordance with provisions of Order 41 Rules 30 and 31 CPC. The issues, which were framed by the trial Court have not been taken up by the lower Appellate Court for decision. Instead, the lower Appellate Court has framed its own two points and have decided the case accordingly. Still further, it is submitted that the plaintiffs were recorded as "Gair Marusian". Since even the revenue record show the plaintiffs to be in cultivating possession of the suit land, therefore, they are entitled to remain in possession. Hence, the lower Appellate Court has committed a total perversity while deciding the appeal.

Having heard the learned counsel for the appellants, this Court does not find any substance in his arguments. So far as the argument of the learned counsel that the lower Appellate Court has not followed the provisions as contained in Order 41 Rules 30 and 31 CPC is concerned, this Court finds that the Lower Appellate Court has duly dealt with all the issues, which were framed by the trial Court. The lower Appellate Court has upheld the findings recorded by the trial Court on the issues which were framed and decided by the trial Court. However, to reach on a conclusion qua those issues, the lower Appellate Court has also considered two specific

points framed by it. This Court does not find any illegality or perversity in the approach adopted by the lower Appellate Court. Needless to say that the Appellate Court can express its agreement with the reasoning and finding given by the Court below and it need not give any detailed reasons for its own conclusions. In any case, in the present case, the lower Appellate Court has based his conclusions on sound reasons and the materials led in evidence. It was the positive pleading of the plaintiffs that they were allotted the land after the same was declared as surplus in the hands of defendants No.4 to 11. However, the appellants have not led any evidence, to show, either that the land was ever declared surplus in the hands of defendants No.4 to 11 or that the same was allotted to the plaintiffs at any times subsequent thereto. Hence, both the Courts below have rightly disbelieved the version given by the plaintiffs.

So far as the possession is concerned, a perusal of the record also shows that it is the case of the plaintiffs themselves; that the entries in the revenue record, which have been entered in the name of the defendants since 1970; be set aside. Still further, the sale deed in favour of defendants No.12 to 36 has been challenged by the plaintiffs. Both these facts, put together, would show that the defendants No.12 to 36 had become owner by purchase. Thereafter, they are continuously shown in possession even as per the revenue records pertaining to possession. Hence, the plea of the plaintiffs qua possession also stands falsified. Not only this, whatever record showed the plaintiffs to be in possession, even that showed them to be in possession of only 1/6th share and not the entire suit property. Even that record is not carrying any consistent entries; as to how that possession

was shown in their names. The Courts below have rightly recorded that at some places, the possession is shown in favour of the plaintiff, on the basis of mortgage, at some other place; it is shown to be on the basis of purchase and at some other places, it is shown as barely “Gair Marusian”. Hence, the entire inconsistency in the entries reflect upon the fact that, in fact, these entries were wrongly being carried forward. The plaintiffs have not been in possession as well. This fact also stands highlighted by the very fact that the plaintiffs themselves have pointed out that they were dispossessed of the suit properly; by way of order passed by the Assistant Collector Agrarian in the year 1988.

No other point was raised.

In view of the above, finding no merit in the appeal, the same is dismissed.

February 26, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No