

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

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**RSA No. 2262 of 2018
Date of decision : 10.2.2020**

Amar Singh (deceased) through LR's and others**.....Appellants****Vs.****Rama Nand and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Adarsh Jain, Advocate, for the applicant/appellants

Rajbir Sehrawat, J. (Oral)

This is the second appeal filed by the plaintiffs raising their grievance against the judgments and decrees passed by the Courts below, whereby the suit filed by the appellants/plaintiff has been partly decreed against defendants No.1 to 3 and the same has been dismissed as against defendants No.5 and 6.

For the convenience, the parties hereinafter are referred to as the plaintiff and the defendant, as they were described in the original suit.

Shorn of unnecessary details, the brief facts giving rise to the present appeal are that, the plaintiffs had filed a suit for declaration to the effect that the plaintiff No.1 is the owner in possession of 9/30th share and the plaintiffs No.2 to 4 are the owners in possession to the extent of half share of the land mentioned in para No.1 of the plaint. This ownership was claimed with the averments that the predecessor in interest of the parties to the suit namely; Khachera and Handal sons of Budhi Ram; were the *Bhondedars* on the suit land and had been cultivating the same for the last many years. After the

death of the original *Bhoneddar*, land was being cultivated by the plaintiffs and their predecessor in interest Khachera; because the only daughter of Handal namely-Angoori was married at a distant place. Otherwise also, since the rights of the *Bhoneddar* were heritable only by the male members of the family, being in tenancy, therefore, the daughter of Handal, otherwise also, had no right. Accordingly, the above said suit was filed.

Upon notice, defendants No. 1 to 3 appeared and filed their admitting written statement. The defendant No.4 had been given up. In the first instance, even defendants No.5 and 6 had filed admitting written statement. However, later on, they moved an application to amend their written statement and to contest the claim of the plaintiffs on merits. The application moved by defendant No.5 in this regard was allowed vide order dated 18.9.2011. Thereafter, defendants No.5 and 6 filed separate written statement, in which the claim of the plaintiffs was resisted and it was specifically averred that plaintiffs were not the owners in possession of the suit land to the extent of share of defendants No.5 and 6. Still further, it was pleaded in the written statement that defendants No.5 and 6 became lawful owners in possession of the suit land to the extent of their share by virtue of Court decree passed on 1.2.2003, by Civil Judge (Junior Division), Palwal, in case No. 739 dated 8.9.1994, which was the suit filed jointly by the plaintiffs and Angoori Devi, the predecessor in interest of defendants No.5 and 6. That suit was decreed making Angoori Devi, who was the predecessor in interest of defendants No.5 and 6, as the owner in possession. That decree had become final. The plaintiffs could not claim against that decree. Accordingly, the suit of the plaintiffs against defendants No. 5 and 6 is without any basis.

The plaintiffs led their evidence. However, defendants No.1 to 3 did not lead evidence because they had admitted the claim of the plaintiffs. Even defendants No.5 and 6 did not lead evidence, although they had denied the claim of the plaintiffs by filing written statement. Vide order dated 14.5.2012, defendants No. 5 and 6 were proceeded against ex parte.

After considering the case of the plaintiffs, the trial Court decreed the suit to the extent of the claim of the plaintiffs against defendants No.1 to 3, since they had filed admitting written statement. However, their suit against defendants No.5 and 6 was dismissed.

Aggrieved against the judgment and decree, the plaintiffs preferred the appeal before the lower Appellate Court. However, even the lower Appellate Court has dismissed the appeal. Accordingly, the present appeal has been preferred by the plaintiffs.

Arguing the case for the plaintiffs, learned counsel for the appellants has submitted that the Courts below have gone wrong in law because, in the first instance, defendants No.5 and 6 had filed admitting written statement. They could not have been permitted to withdraw the admission made by them in the written statement. Hence, the suit filed by the plaintiffs have to be decreed against their share as well. Still further, it is submitted that defendants No.5 and 6 have not led even evidence to dispute the claim of the plaintiffs.

Having heard learned counsel for the plaintiffs and having perused the case file, this Court does not find any substance in the arguments of learned counsel for the plaintiffs. A perusal of the record shows that though, in the first instance, defendants No.5 and 6 had filed a written statement admitting the

claim of the plaintiffs, however, subsequently, they had filed an application for contesting the suit on merits, which had the effect of withdrawing the alleged admission in the earlier written statement. That application was duly allowed by the trial Court. The plaintiffs had not even challenged the said order before any higher Court. The order permitting the amendment of the written statement filed by defendants No.5 and 6 had become final. Accordingly, in the second appeal, the plaintiffs cannot be permitted to take a turn around and start disputing the amendment in the written statement, made by defendants No.5 and 6.

This Court also does not find any substance in the arguments of learned counsel for the plaintiffs that the defendants have not led any evidence to resist the claim of the plaintiffs, therefore, their suit should be decreed. Defendants No.5 and 6 have specifically pleaded in the written statement that earlier the plaintiffs along with Angoori, the predecessor-in-interest of defendants No.5 and 6, had filed a suit, which was decreed in their favour. Accordingly, the plaintiffs and the predecessor-in-interest of defendants No.5 and 6 were declared owners in possession of their respective shares in the suit land. This decree is not even denied by the plaintiffs. No evidence has been led on file to contest this aspect, which was specifically pleaded by defendants No.5 and 6. Rather, the plaintiffs have also got the property under the same decree; under which defendants No.5 and 6 are claiming. Since the Court decree deciding the rights between the parties had intervening effect; between the rights of the predecessor in interest of the parties as *Bhoneddar* and the present suit, therefore, the argument of learned counsel for the plaintiffs that the tenancy in the form of *Bhoneddar* was not heritable, is totally irrelevant.

The fact remains that the rights of the parties were determined by that earlier Court decree, in a suit which was filed by the plaintiffs themselves and in which the plaintiffs were not held to be the owners in possession of the suit land to the extent of share of defendants No.5 and 6. Hence, this Court does not find any illegality or perversity with the judgments and decrees passed by the Courts below, whereby, the suit of the plaintiffs qua share of respondent No.5 and 6 has been dismissed.

No other point was argued.

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

(RAJBIR SEHRAWAT)
JUDGE

10.2.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No