

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

RSA-607-2021 (O&M)

Date of Decision:14.09.2021

Sunder @ Surinder Singh and others

....Appellants

VS

Smt. Shakuntala and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Keshav Pratap Singh, Advocate, for the appellants

Mr. Abhilaksh Grover, Advocate, for respondent No.1- Caveator

SUDHIR MITTAL, J. (Oral)

The suit for declaration that plaintiff is owner in possession of 100 square yards plot in Khasra No.1043 with consequential relief of injunction has been decreed by the trial Court. Appeal has been dismissed. Aggrieved by the aforementioned judgments, the present second appeal has been filed.

Learned counsel for the appellants has submitted that the evidence on record indicates that the plaintiff had purchased a share in Khasra No.1043. Thus, by virtue of the said sale deed, she did not get specific possession of land measuring 100 square yards. The Local Commissioner Report also establishes that the plaintiff did not have possession of a particular area measuring 100 square yards and, thus, the Courts below were in error in decreeing the suit. He further submits that the defendants had filed a suit against the plaintiff for injunction restraining her from interfering in their possession of land comprised in Khasra No.1051. The said suit was decreed and judgment thereof is Exhibit D-11. It has not been challenged any further. Based upon the said judgment, the trial Court had enjoined the plaintiff from interfering in the possession of the defendants in the said khasra. The said finding has been reversed by the Appellate Court resulting in nullification of the judgment Exhibit D-11.

Para 25 of the First Appellate Court Judgment is as follows:

25. However, Learned trial court erred in passing injunction decree

against the plaintiff restraining her from creating any interference in khasra No.1051 of defendants, despite the fact that there was no counter stay application in this regard of defendants with their written statement. Still further there was no counter claim, which could be filed by defendants with their written statement.

The aforementioned finding cannot be faulted in any manner. The trial Court did not have any jurisdiction to pass an order regarding Khasra No.1051 since the said khasra number was not part of the suit. Thus, the submission of learned counsel for the appellants cannot be accepted. To allay the fears of both parties, it is clarified that judgment and decree Exhibit D-11 is in no way affected by the observations of the First Appellate Court.

Regarding the possession of the plaintiff, learned counsel appearing on caveat has stated at the Bar that his client has no concern with Khasra No.1051. That being the case, the defendants should not feel perturbed if they have been enjoined as admittedly, they do not own any property in Khasra No.1043.

Learned counsel for the defendant-appellants, however, submits that the finding of possession returned by the Courts below is contrary to the record. The said finding deserves to be set aside as otherwise his clients would be adversely affected by the injunction against them.

The submission is misconceived. Since the defendant-appellants have no claim on property comprised in Khasra No.1043, I do not see how their rights could be adversely affected by the decree of injunction.

In view of the above, the appeal has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

14.09.2021
Poonam Negi