

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

RSA No. 240 of 2021 (O&M)

Date of Decision: September 27, 2021

CHAJJA SINGH (SINCE DECEASED) THROUGH LRS & OTHERS
..... Appellant(s)

Versus

RAM LAL (SINCE DECEASED) THROUGH LRS & OTHERS
..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Jivesh Malik, Advocate and
Mr. Hitesh Malik, Advocate
for the appellants.

Mr. V.K. Jain, Senior Advocate with
Mr. Aman Priye Jain, Advocate and
Mr. Prashant Vashisth, Advocate
for the respondents/caveators.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

CM-1580-C-2021

There is a delay of 175 days in re-filing of the appeal. For the reasons mentioned in the application, duly supported by an affidavit of the applicant, same is allowed as prayed for and delay of 175 days in re-filing of the appeal is condoned.

Application is disposed of.

CM-1581-C-2021

Prayer in the application is for bringing on record legal representatives of deceased appellant no.1.

Learned counsel for the non-applicants/respondents/ caveators has raised no objection if the application is allowed.

For the reasons mentioned in the application, same is allowed as prayed for. Legal representatives of appellant no.1 as detailed in para 2 of the application, are impleaded as party in this appeal.

Application is disposed of.

CM-1582-C-2021

Prayer in the application is for bringing on record legal representatives of deceased respondent no.4.

Learned senior counsel for the non-applicants/respondents/ caveators has raised no objection if the application is allowed.

For the reasons mentioned in the application, same is allowed as prayed for. Legal representatives of respondent no.4 as detailed in para 2 of the application, are impleaded as party in this appeal.

Application is disposed of.

RSA No. 240 of 2021

Appellants arrayed as defendants no.1 to 6 before the learned trial Court have filed this appeal challenging judgment and decree dated 25.09.2007, passed by learned Additional Civil Judge (Senior Division), Rajpura as well as judgment and decree dated 25.03.2019, passed by learned Additional District Judge, SAS Nagar Mohali.

Brief facts necessary for adjudication of the case are that plaintiffs/respondents filed a suit for possession with the averments that they are owners of the suit property having purchased the same from the previous owner Basheshar Singh, through a registered sale deed dated 01.04.1980, for a sale consideration of Rs.46,725/-. It is pleaded that mutation in terms of the sale deed was duly sanctioned by the Revenue Authorities in favour of the plaintiffs. Defendants no.1 to 6/present appellants were stated to be in unauthorized possession of the suit land without consent of the plaintiffs and their status was alleged to be of trespassers. It is further pleaded that the said defendants enjoyed profits from the suit property without any payment to the plaintiffs. Therefore, plaintiffs were entitled to mesne profits. Defendants no.7 to 12 were impleaded as parties vide order dated 04.11.1985 in the application under Order 1 Rule 10 CPC.

Present appellants/defendants contested the suit. While controverting the allegations in the plaint alleged that plaintiffs are not owners of the suit land and that they had wrongly purchased the same from its previous owner Basheshar Singh, knowing well that Basheshar Singh had already entered into an agreement to sell the suit land alongwith some other land with one Amarjit Singh and possession of the suit land had already been delivered to Amarjit Singh. Said Amarjit Singh died and thereafter his legal representatives filed suit for specific performance of contract against the plaintiffs and Basheshar Singh, which is still pending before the High Court. It is further pleaded that Chajja Singh is in possession of the suit land as tenant of Balwinder Kaur and other legal representatives of Amarjit Singh. Defendants no.7 to 12 (LRs of Amarjit Singh) filed separate written

statement reiterating the stand taken by defendants no.1 to 6. Dismissal of the suit was prayed.

Replication was filed. Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i. Whether plaintiffs are owners of the suit land? OPP.
- ii. Whether defendants are in unauthorized possession of the suit land? OPP.
- iii. Whether plaintiffs are entitled to recover sum of Rs.3834-49/- by way of mesne profits for the crops Rabi 1981 to Rabi 1983 in respect of the suit land? OPD
- iv. Whether plaintiffs are entitled to the decree for possession of the suit land? OPP
- v. Whether defendants are entitled to special costs under Section 35A of CPC? OPD
- vi. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that plaintiffs succeeded in proving their case on the basis of evidence on record. Hence, the suit was decreed to the effect that plaintiffs were entitled to possession of the suit land. Defendants were directed to hand over vacant possession of the suit property within two months and they were also ordered to deposit mesne profits of Rs.3834-49/-.

Two appeals were preferred. One by Chajja Singh, successor in interest of present appellants and defendants no.2 to 6 and another by defendants no.7 to 12. Learned Additional District Judge, SAS Nagar,

Mohali, vide judgment dated 25.03.2019 dismissed both the appeals. Aggrieved therefrom this regular second appeal has been filed by legal representatives of defendant no.1 – Chajja Singh only. Chajja Singh, defendant no.1 has died.

Ms. Nupur Choudhary, Advocate, who had earlier addressed arguments at length on 20.09.2021 in this case, had vehemently argued that plaintiffs have in fact failed to prove their title. Plaintiffs it is stated cannot depend on the weakness if any of the defendant but have to stand on their own legs. Learned counsel submits that mutation by itself does not confer title. Furthermore, learned Courts below have wrongly held the appellants to be trespassers. The appellants, it is submitted, were legally inducted as tenants by Amarjit Singh. As appellants were tenants of Amarjit Singh, they necessarily have to be evicted from the suit property, in accordance with law. Therefore, both the judgments and decrees should be set aside. Learned counsel further submitted that as tenancy of the appellants under Amarjit Singh had been admitted by the plaintiffs, they cannot be held to be trespassers.

Learned senior counsel for the respondents, per contra submits that there are concurrent findings of fact in the earlier litigation wherein no right has been held to accrue or vest in Amarjit Singh, which would necessarily include his legal heirs. Learned senior counsel further refers to order dated 18.07.2005 passed in CR-3461-2005, titled ‘Balwinder Kaur and others Vs. Ram Lal and others’ to submit that amendment of written statement sought by Balwinder Kaur and others was also not permitted.

Therefore, finding of the learned Courts below holding the appellants to be

trespassers deserves to be upheld. Moreover, DW1 has clearly admitted plaintiffs to be the owners of the property in dispute. It is thus prayed that, this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

It is a matter of record that previous owner of the property was Basheshar Singh. Basheshar Singh was the owner of 26 Bighas 10 Biswas of agricultural land. The plaintiffs-respondents claimed to have purchased the suit property measuring 13 Bighas 7 Biswas from Basheshar Singh, vide sale deed dated 01.04.1980 in pursuance of a consent decree, in a suit for specific performance of agreement dated 27.11.1978, filed by the plaintiffs-respondents against Basheshar Singh.

It is pertinent to mention here that Basheshar Singh was the owner of 26 Bighas 10 Biswas of the agricultural land. He entered into an agreement to sell on 18.10.1977 with Amarjit Singh (predecessor in interest of defendants no. 7 to 12) and delivered actual physical possession of the entire land to Amarjit Singh. Sale deed in regard to only 12 Bighas 15 Biswas was executed by Basheshar Singh on 04.07.1978 in favour of the legal representatives of Amarjit Singh. Amarjit Singh had since died. Some of the consideration amount remained outstanding as per recital in the sale deed. Balwinder Kaur and others (LRs of Amarjit Singh) continued in possession of the entire land. In the meanwhile Basheshar Singh entered into an agreement of sale on 27.11.1978 qua 13 Bighas 15 Biswas of agricultural land with respondents-plaintiffs Ram Lal and Gurbachan.

It is also a matter of record that defendant Balwinder Kaur i.e. successor in interest of Amarjit Singh filed a civil suit for specific performance of contract dated 18.10.1977 between Basheshar Singh and Amarjit Singh regarding 13 Bighas and 15 Biswas of agricultural land i.e. the suit property in this case. Civil Suit filed by Balwinder Kaur for specific performance of the contract dated 18.10.1977 was dismissed by the learned trial Court (Ex.P4). Appeal filed by Balwinder Kaur was also dismissed by the learned Additional District Judge, Patiala (Ex.P5). RSA-1403-1984 filed by Balwinder Kaur and others was also dismissed by this High Court on 23.10.2002 (Ex.P18). Said proceedings have attained finality with the Special Leave Petition being dismissed by the Hon'ble Supreme Court on 03.03.2003. It is further a matter of record that defendant-Balwinder Kaur and others i.e. the legal representatives of Amarjit Singh were impleaded in the civil suit filed by the present plaintiffs. Balwinder Kaur filed an application for amendment of her written statement in the present proceedings after dismissal of her SLP on 03.03.2003 and after framing of an issue in the present suit regarding entitlement of the plaintiffs to mesne profits. Balwinder Kaur sought to amend the written statement to take the plea of protection of possession under Section 53-A of the Transfer of Property Act, 1882 (for short TP Act). It is specifically observed in order dated 18.07.2005 in CR No.3461/2005, that as regards entitlement to retain possession under Section 53-A of TP Act, once a party loses his right under the agreement by dismissal of the suit, it would be inconsistent and incompatible with his right to remain in possession under the agreement. Therefore, argument raised by learned counsel for the appellants that they

should be considered to be lawful tenants and not trespassers, is totally without merit and unjustified, hence rejected. It is trite to say that once possession under the hands of Amarjit Singh is conclusively held to be impermissible and illegal, the same cannot be held to be legal in the hands of Chajja Singh, his tenant.

Argument which had been raised by Ms. Nupur Choudhary, Advocate that plaintiffs have failed to prove their title is adverted to, only to be rejected. Learned counsel for the appellants is unable to deny that DW-1 Balwinder Kaur has specifically admitted in her cross-examination that a sale deed in respect to the suit land was executed by Basheshar Singh in favour of the plaintiffs, though it is stated that same was wrongly executed due to existence of earlier agreement with Amarjit Singh. Therefore, execution of the sale deed has been specifically admitted by Balwinder Kaur, successor in interest of Amarjit Singh, whose tenant Chajja Singh appellant (now represented by his LRs) claims to be.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment and decree dated 25.09.2007, passed by learned Additional Civil Judge (Senior Division), Rajpura as well as judgment and decree dated 25.03.2019, passed by learned Additional District Judge, SAS Nagar Mohali, which calls for any interference by this Court in regular second appeal. In my considered opinion, no question of law, much less a substantial question of law arises for adjudication in this appeal.

No other argument has been raised.

Accordingly, this regular second appeal is dismissed with no order as to cost.

September 27, 2021
Sunil

(**LISA GILL**)
JUDGE

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