

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

RSA-1407-2022 (O&M)

Date of decision : 22.09.2022

Kanwar Singh and others

...Appellants

Vs.

Sunder through LRs and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. P.R.Yadav, Advocate
for the appellants.

MANOJ BAJAJ, J.

Appellants (defendants) have preferred regular second appeal to challenge the judgment and decree dated 24.11.2021 passed in Civil appeal No.341/2018 by first appellate Court, thereby affirming the judgment and decree dated 29.08.2018 passed by Civil Judge (Junior Division) Rewari, whereby the suit for permanent injunction filed by plaintiffs, was decreed.

Briefly, the facts of the case are that the plaintiffs brought a suit for permanent injunction against the defendants, in respect of land comprised in khewat No.403, khatoni No.472, khasra No.290 (0-12) claiming themselves to be gair mumkin tenants situated at Village Karawara Manakpur, Tehsil & District Rewari to the extent of 3/4th share as gair marusi tenants, on the basis of jamabandi for the year 2005-06. As per the pleadings, the defendants were interfering in their peaceful possession, but despite the requests of the plaintiffs, the defendants tried to dispossess them by raising construction, therefore, the suit was filed seeking decree for injunction.

The defendants contested the suit by filing their written statement, wherein they took preliminary objections regarding its maintainability, *locus-*

standi, jurisdiction etc. and on merits, it was pleaded that plaintiff No.1 was residing in Kosli for the last 30/40 years and has no house, ration card and voter enrollment in the village and plaintiff No.2 was never in possession of the suit property. It was pleaded that defendants were in continuous possession of the suit land since consolidation. Further, while denying the other averments in the plaint, it was prayed that the suit be dismissed.

By filing replication, plaintiffs denied the stand of the defendants in the written statement and reiterated their claim made in the plaint.

Thereafter, the trial Court framed six issues and after considering the evidence adduced by the parties, decreed the suit vide judgment and decree dated 29.08.2018. Being dissatisfied with the judgment and decree dated 29.08.2018, defendants filed first appeal and the same was also dismissed vide impugned judgment and decree dated 24.11.2021. Hence this regular second appeal.

Learned counsel for the appellant has argued that the plaintiffs are not the owners of the suit land, as it earlier belonged to Gram Panchayat and there is no evidence on record to show their possession over the land in question, therefore, the impugned judgment and decree passed by the trial Court, and further upheld by the appellate Court is against the evidence. He submits that PW-5 Raja Ram, Sarpanch of Gram Panchayat Karawara Manakpur in examination-in-chief, as well as in his cross-examination has admitted that the defendants are using the land, therefore, the suit filed by the plaintiffs was bound to fail on this material admission, but the Courts have erroneously decreed the same. In support of his argument, learned counsel has relied upon the decision of this Court passed in “**Dholan Singh Vs. Ilyas and**

another”, 2018 (3) PLR 156. He submits that the impugned judgment and decree deserves to be set aside.

After hearing learned counsel and considering the material on record, this Court finds that the plaintiffs have adduced documentary evidence on record to establish their possession by producing jamabandi for the years 2005-06 (Ex.P-5) and 2015-16 (Ex.P-3), wherein the possession of the plaintiffs is reflected. Apart from it, as per the case of the defendants also the land in question, though in fact belongs to Gram Panchayat, but the defendants are in possession of this land and is being used by them. Concededly, the defendants have only claimed usage of the property, whereas as per the evidence on record, i.e. roznamcha Ex.P-2 as well as the evidence of PW-5- Raja Ram Sarpanch of Gram Panchayat Karawara Manakpur, the suit property was allotted to the ancestors of the plaintiffs.

During the course of hearing, it has not been disputed by Mr.Yadav, learned counsel for the appellants, that the case of the defendants is founded upon oral testimony or on the admission of Raja Ram (PW-5) and on the contrary, the claim of the plaintiffs regarding their possession over the suit property is supported with the documentary material as well as deposition of Hari Singh, Patwari (PW-4) and Raja Ram, Sarpanch (PW-5). Thus, the evidence on record shows the possession of the plaintiffs over the land in question and both the Courts have carefully examined the evidence on record before returning the finding on material issues in favour of the plaintiffs. The citation relied upon by the learned counsel for the appellant is not applicable in the present case, as in the said case, the question regarding maintainability of the injunction suit was answered by holding, that if, the plaintiff is not in

possession, the suit for permanent injunction would not be maintainable, whereas in the present case, the stand of the defendants that the plaintiffs are not in possession of the suit property is not supported with any evidence.

Apparently, the findings by the trial Court are based upon proper appreciation of evidence, therefore, the first appellate Court has also rightly upheld the said judgment and decree.

No other point was argued.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, the same is dismissed.

(MANOJ BAJAJ)
JUDGE

22.09.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No