

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

RSA-191-2021 (O&M)
CM-1358-C-2021
Date of Decision: 11.02.2022

RAJBIR SINGH AND ANOTHER

...Appellants

Versus

KANTA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Hardip Singh, Advocate
for the appellants.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiffs are in second appeal before this Court assailing the trial Court judgment and decree dated 07.04.2017 as upheld by learned First Appellate Court vide its judgment and decree dated 08.02.2021.

3. Briefly stated, facts as noticed by Courts below are that plaintiffs (appellants and proforma respondent No.2 herein) instituted a suit for permanent injunction. Averments, *inter alia*, are/were that the property in dispute was in cultivating possession of their grandfather-Shri Sardari Lal for more than 50 years. He had executed a Will dated 02.07.2009 in favour of appellants/plaintiff. After the death of Shri Sardari Lal on 21.12.2009, the sole defendant started to interfere in the cultivation possession of said property. Upon notice, the defendant appeared and filed her written statement, stating therein, that earlier her father-in-law, namely, Sardari Lal

was in cultivating possession of the said land. After his death, she has been cultivating the property. Even the girdawari in respect of land in question was duly corrected in her favour vide an order dated 30.01.2015 passed by AC IInd Grade, Naraingarh. She also pleaded that even if the Will in question was to be executed, the same has to be only qua the land owned by late Shri Sardari Lal, which is with her and is under the ownership of certain other individuals.

4. Based on the rival pleadings, following issues were framed:

- 1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether the plaintiff has concealed true and material facts from the Court? OPD.*
- 4. Whether there is no cause of action in favour of plaintiff? OPD*
- 5. Relief.*

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, trial Court decided issue Nos.1 and 3 in favour of the defendant and against the plaintiffs; issue Nos.2 and 4 in favour of the plaintiffs and against the defendant and dismissed the suit.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this court.

8. I have heard the learned counsel and perused the judgments of both the Courts below.

9. Learned First Appellate Court while re-appreciating the

evidence, *inter alia*, gave valid reasons as below :-

“14. I do not find merit in the contention of the learned counsel for the appellants to the effect that when Sardari Lal was in possession of the suit land, continuity of his possession should be upheld on the basis of the continuity of tenancy which warrants that the tenancy of the agricultural land always goes to male lineal descendants and therefore, possession of the suit property should be presumed to have gone in favour of the appellants/plaintiffs, in the absence of the evidence to rebut the presumption of continuity. Since in the present case, the presumption of continuity and inheritance of the tenancy by plaintiffs, has been duly rebutted by the defendant/respondent by leading cogent and reliable evidence in the form of Ex.D2, site inspection report which co-incidentally has been relied upon and proved by DW2 Naresh Kumar, Halqua Patwari which clearly shows that Asstt. Collector-II and Patwari had visited the suit property and had found defendant Kanta Devi to be in cultivating possession of the land in dispute with her wheat crops standing in the suit property.

15. PW-4 Sudhir Kumar has duly confirmed the said fact and has also proved Khasra-Girdwari Ex.P14. He also proved the Inspection Report, Ex.P29 which was incorporated in revenue record Rapat No.184.

16. xxx xxx xxx

17. Thus, in the present case, the defendant having clearly shown delivery of possession to her by proving her actual physical possession and also corresponding omission made in the Will, in respect of the suit property. There is no ground for holding that appellants/plaintiffs were in possession of the suit property.

18. Last but not the least, the additional evidence adduced by the respondent/defendant also supports her claim on the suit property. Firstly, the affidavit of Malak Ram (son of Sardari Lal) affirms the possession being delivered to Kanta Devi widow of Shyam Lal during the life time of Sardari Lal. Secondly, affidavit of Raj Rani (daughter of Sardari Lal) also support the possession of Kanta Devi from the time of her father was alive, in lieu of her service and care of Sardari Lal during his life time. Thirdly, the order in appeal filed for correction of Girdwari dismissing the appeal of the appellants/plaintiffs, all confirm and support the decision rendered by the Ld. Civil Judge.”

10. To my mind, judgments under challenge have been rendered after due and correct appreciation of cogent evidence adduced by the respective parties.

11. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called

for to disturb the said concurrent findings. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

12. Furthermore, no question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

13. Admitted position remains that the revenue records as on today are still under adjudication as the revision is pending. Pendency thereof, at this stage, is no ground to interfere in the findings rendered by the Courts below. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld. Appellants are at liberty to institute, if so advised, fresh proceedings in accordance with law after getting the revenue records corrected.

14. Pending application/s, if any, shall also stand disposed of.

15. No order as to costs.

February 11, 2022
gurpreet

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No