

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1624-2022 (O&M)

DATE OF DECISION: AUGUST 2, 2022

VIJAYPAL & OTHERS

...APPELLANTS

VERSUS

HANUMAN PARSAD & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. MUNISH GUPTA, ADVOCATE FOR THE APPELLANTS.

MANOJ BAJAJ, J.(ORAL)

The appellants-plaintiffs are aggrieved against the judgement and decree dated 11.5.2022, passed by the first appellate Court in Civil Appeal No.105 of 2019, whereby the judgement and decree dated 22.1.2019, passed by the Civil Judge (Jr.Divn.), Mahendergarh in Civil Suit No.6519 of 2014, dismissing the suit of the plaintiffs was affirmed.

Briefly, the facts of the case are that the plaintiffs filed a suit for permanent injunction for restraining the defendants-respondents from interfering in the possession of 1/6th share of the land consisting in Khewat No.26, Khatoni No.29 Kita 15, measuring 116 kanal 00 marla as per jamabandi for the year 2012-13 situated at village Jairpur, Tehsil and District Mahendergarh and land consisting in killa No.63/19/2 (4-0 saalam), 63/20 (8-0 in it 2-13 East), 63//22 (8-0 saalam), 80//2 (8-0 in it 4-13 North), kita 04 measuring 19 kanal 06 marla. As per pleadings the plaintiffs-appellants are owners in possession of the above suit land and have been cultivating it, whereas the defendants are adamant to oust them from the suit land. On this cause of action, the above suit was filed.

The suit was contested by the contesting defendants-

respondents by filing written statement, wherein they have raised preliminary objections regarding its maintainability, *locus standi* and cause of action. It was pleaded that neither the plaintiffs are having 1/6th share in the total land nor they are in cultivating possession of the same, and while denying all the other averments, it was prayed that the suit be dismissed.

After completion of pleadings and framing of issues, the parties adduced their respective evidence and considering the same, the trial Court returned a finding in favour of the defendants on the material issue and against the plaintiffs dismissed their suit vide its judgement and decree dated 22.1.2019.

Dissatisfied with the judgement and decree dated 22.1.2019, the appellants carried an appeal before the District Judge, Narnaul and the same was also dismissed through the impugned judgement and decree dated 11.5.2022. Hence, this Regular Second Appeal.

Learned counsel for the appellants has argued that the plaintiff and the defendants are co-sharers and the claim raised by the plaintiffs-appellants that they are in exclusive possession of the suit property has been erroneously declined by both the Courts, as they have not discussed the material piece of documentary evidence Ex.P2, i.e. the khasra girdawari for the year 2012-13. He submits that in the said revenue record, the names of the defendants are not mentioned and the property with specific khasra numbers occupied by the plaintiffs is equivalent to their 1/6th share, therefore, the impugned judgements and decrees passed by the trial Court and upheld by the first appellate Court deserve to be set aside. According to learned counsel, it is not the case where the Courts have misread the

evidence, but apparently the important evidence escaped the attention of the Courts and interference is called for by this Court.

After hearing learned counsel for the appellant and considering the above arguments, this Court finds that admittedly, the plaintiffs are the co-sharer of the defendants and in order to seek injunction against the co-sharer, the plaintiffs are required to adduce convincing evidence to establish their exclusive possession over the specific portion of the land, by also establishing ouster of the other co-sharers. A perusal of Ex.P-2, khasra girdawari shows that this entry was recorded just few months before the filing of the suit, i.e. on 24.9.2014 whereas, the suit was filed on 7.10.2014 and apart from this, there is no other revenue entry showing exclusive possession of the plaintiffs. During the course of hearing, learned counsel for the plaintiffs-appellants produced the copy of the plaint, and there is no averment in it that the plaintiffs are continuing in exclusive possession of the suit property for a long time, much less with continuity. Thus, this Court is of the opinion that the findings returned by both the Courts are based upon proper appreciation of the evidence and are not perverse.

No other point was argued.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, no case is made out for interference by this Court.

Appeal is dismissed.

August 2, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No