

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4567-2019

DATE OF DECISION: JULY 29, 2022

MANGAL SINGH

...PETITIONER

VERSUS

KASHMIR SINGH & ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. A.P. KAUSHAL, ADVOCATE FOR THE PETITIONER.

MANOJ BAJAJ, J.(ORAL)

The appellant-plaintiff is aggrieved against the judgement and decree dated 2.8.2019, passed by the first appellate Court in Civil Appeal No.54 of 3.2.2017 whereby the judgement and decree dated 10.1.2017, passed by the Civil Judge (Jr.Divn.), Fazilka in Civil Suit No.169-1/29.7.2013, dismissing the suit of the plaintiff was affirmed.

The facts in brief leading to the appeal are that the plaintiff filed a suit for permanent injunction restraining the defendants from interfering in his possession over land measuring 4 kanal comprised in Rectangle No.26 Killa No.17/2(4-0), Khewat No.190, Khatoni No.282, situated at Village Maujam, Tehsil Fazilka. It was pleaded that the defendant No.2 in collusion with the revenue authorities got allotted the suit property in his name, whereas he was never in possession of the same, and though an appeal challenging the allotment was also filed before the competent authority, but the same is also pending adjudication. Further, vide order dated 27.11.2012, passed by the Court of Iqbal Singh, Naib Tehsildar-cum-AC II, Fazilka, the plaintiff's name is reflected in the khasra girdawari, but the defendants are

adamant to dispossess him from the suit land illegally and forcibly, therefore, on this cause of action, he prayed for a decree of permanent injunction against the defendants.

The suit was contested by the contesting defendants No.1 and 2, whereas, defendant No.3 did not contest the suit and was proceeded against ex-parte. The defendants No.1 and 2 filed written statement wherein it was pleaded that order dated 27.11.2012 passed by Iqbal Singh, Naib Tehsildar, Fazilka was challenged, and it was set aside by the Collector, Fazilka vide order dated 30.10.2013. It was claimed that the suit land was allotted to defendants No.1 and 2 on the basis of their cultivation and continuous possession as owners by the Revenue Department under the Punjab Package Deal Property Act. The other averments in plaint were denied and it was prayed that the suit of the plaintiff be dismissed.

After completion of pleadings and framing of issues, the parties adduced their respective evidence and considering the same, the trial Court returned the finding on the material issues against the plaintiff and in favour of the defendants, and dismissed his suit vide judgement and decree dated 10.1.2017.

Aggrieved against the said judgement and decree, the plaintiff preferred first appeal and the same was also dismissed through the impugned judgement and decree dated 2.8.2019, passed by the first appellate Court. Hence this Regular Second Appeal.

Learned counsel for the appellant has argued that the appellant is in possession of the suit property for a long time and defendant No.2 in connivance with the revenue officials got the said property allotted in his

name, and the Courts while dismissing the suit as well as the appeal seeking permanent injunction have ignored the settled law that even an unauthorized occupant has to be dispossessed in accordance with law. Learned counsel has argued that the allotment in favour of defendant No.2 is yet to be finalized as he had initiated proceedings to seek cancellation of allotment in his favour and the Courts have ignored the report Ex.P7 submitted before the Tehsildar, Fazilka which clearly shows that the appellant is in possession of the suit property. Therefore, interference by this Court is warranted.

After hearing learned counsel and considering the evidence on record, this Court is of the opinion that as far as the allotment of the suit property is concerned, it is in favour of defendant No.2 and a perusal of report Ex.P7 relied upon by the appellant shows that it only contains the factum of existing construction at the suit property and it in no manner suggests that indeed the plaintiff-appellant is in actual physical possession of it. Further, analysis of the impugned judgements and decrees shows that the evidence on record has been properly appreciated by both the Courts, while returning the findings on material issues against the plaintiff.

No other argument was raised.

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

July 29, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No