

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

Sr. No.215

Reserved on 29.10.2022

Date of Decision: 04.11.2022

1) RSA No.2612 of 2013 (O&M)

The Deputy Director, Baghwani Department,
Matewara and others

.... Appellants

Versus

Balwinder Singh and others

... Respondents

2) RSA No.235 of 2014 (O&M)

The Deputy Director, Baghwani Department,
Matewara and others

.... Appellants

Versus

Balwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Yadwinder Singh, AAG, Punjab for the appellants.

Ms. Puja Chopra, Advocate for the respondents.

TRIBHUVAN DAHIYA, J.

By this order aforesaid appeals shall be decided as the same arise out of the common judgment and decree of the trial Court dated 10.05.2011. Against the said order, both the plaintiffs as well as the defendants preferred appeals before lower appellate Court, which were decided by two separate orders, one passed in the plaintiffs' Civil Appeal

in defendants' Civil Appeal No.15 dated 06.03.2013 pertaining to RSA No.235 of 2014.

2. Facts of the case in brief are, respondent/plaintiffs (hereinafter referred to as 'plaintiffs') filed a suit for permanent injunction claiming themselves to be owners in possession of the suit property, which was purchased by them from Sukhdev Singh son of Amar Singh by registered sale deed dated 29.04.2003. At the time of execution and registration of the sale deeds, possession of the property was delivered to them by Sukhdev Singh and mutation was entered in their names. The suit was contested by the appellants/defendants (hereinafter referred to as 'defendants') claiming that the suit land in question was in their possession since 1967-68 as it was previously owned by the Central Government and transferred to the State Government/defendants, vide letter dated 03.06.1961. They relied upon an order dated 10.06.1985 passed by the Chief Settlement Commissioner (DC Ludhiana) vide which allotment of the suit land in favour of Mukhtiar Kaur (predecessor in interest of the plaintiffs) stood cancelled. Further, a reference was made to FIR No.57 dated 28.07.2005 under Sections 447, 506, 148, 149, 427, 120-B IPC (Ex.D9) to allege that a case was registered against the plaintiffs for interfering their possession.

3. Upon pleadings of the parties, the following issues were framed by trial Court for deciding the *lis*:

1. Whether the plaintiffs are entitled to permanent injunction?OPP
2. Whether the plaintiffs are owners in possession of the suit property?OPP
3. Whether the plaintiffs have not come to the court with clean hands?OPD
4. Whether the plaintiffs have got locus standi to file the present suit?OPP

5. Whether any cause of action accrued to the plaintiffs to file the present suit?OPP
6. Relief.

4. While recording findings on Issue No.1, the trial Court held that plaintiffs were in possession of the suit land, and the possession stood admitted by the defendants' witnesses, therefore, they could not be dispossessed forcibly and illegally. The Issue was accordingly decided in plaintiffs' favour. While recording findings on Issue No.2, the trial Court held that the sale deeds, on the basis of which plaintiffs claimed to be owners of the suit land, could not be said to have been proved, as the defendants brought sufficient evidence to establish that the property belonged to the Central Government and was allotted to Mukhtiar Kaur, but the conveyance deed in her favour stood cancelled by order dated 10.06.1985 (Ex.D3). Issue No.3 was decided in favour of the plaintiffs since they were proved to be in possession of suit property. Issues No.4 and 5 were also decided in the plaintiffs' favour by holding that they were entitled to file the suit.

5. Both, the plaintiffs as well as defendants, filed appeals against the trial Court order. The lower appellate Court by judgment and decree dated 10.11.2012 passed in the plaintiffs' appeal, set aside the findings of trial Court on Issue No.2 and held the them to be owners in possession of the suit property. The defendants' appeal was dismissed, vide judgment and decree dated 24.08.2013, holding that the plaintiffs were owners in possession of the suit property.

6. Learned counsel for the appellants-defendants has argued that judgments of the Courts below need to be set aside only on the ground that

the plaintiffs have claimed declaration with respect to the suit land though their title to the property remained in dispute. Therefore, unless the title is perfected, they are not entitled to file the suit in question. In support of his contentions learned counsel has referred to a judgment dated 25.03.2008 passed by the Supreme Court of India in *Civil Appeal No.6191 of 2001*, titled *Anathula Sudhakar versus P.Buchi Reddy (Dead) by LRs and others*.

7. Learned counsel for the parties have been heard and record perused.

8. A perusal of the record establishes that the plaintiffs have been able to prove themselves to be owners in possession of the suit land. The order dated 10.06.1985 (Ex.D3) passed by Chief Settlement Commissioner, cancelling the allotment of land in favour of Mukhtiar Kaur (predecessor in interest of the plaintiffs), was set aside by the Divisional Commissioner, Patiala, by order dated 03.04.2001 (Ex.P4) clearly holding that the conveyance deed dated 25.01.1985 in her favour was legal and valid. The plaintiffs have further established on record that suit land was sold by Mukhtiar Kaur to Sukhdev Singh vide sale deed (Ex.P7), from whom the land was purchased by the plaintiffs vide sale deed dated 29.04.2003 (Ex.P5). Further, vide the demarcation report (Ex.P2) carried out by the revenue authorities, possession of the suit property was handed over to the plaintiffs. Apart from this documentary evidence establishing ownership and possession of the plaintiffs over the suit land, there is clear admission of these facts by the defendants' witnesses. It has been admitted by DW1 in his cross examination that Ex.D3 is a photostat copy of the order, and that the defendants were in possession of the order (Ex.P4) passed by Divisional Commissioner, Patiala, vide which the order of the Settlement Commissioner (Ex.D3) was set aside. He also admitted that the

defendants had not made reference to the order of Divisional Commissioner in the written statement, or in the affidavit filed by them. It was further admitted that after allotment of property mutation was sanctioned in the name of Mukhtiar Kaur and her name was also reflected in the *jamabandis* and *girdawaries*.

9. It is, therefore, apparent that despite the order of Divisional Commissioner, Patiala, dated 03.04.2001 (Ex.P4) being to the defendants' knowledge, they concealed it from the Court and filed written statement disputing the plaintiffs' ownership and possession over the property based upon the order of the Settlement Commissioner dated 10.06.1985 (Ex.D3), which already stood over ruled. Pertinently, the suit in question was filed on 16.07.2005, much after settlement of the dispute regarding ownership of land in the plaintiffs favour by order of Divisional Commissioner dated 03.04.2001. Therefore, by no stretch of imagination could it be said that their title was in dispute. Even with regard to lodging of the FIR against the plaintiffs, DW1 admitted that the plaintiffs had filed a suit for damages against the concerned officials for lodging false FIR. The defendants have, therefore, no legs to stand upon.

10. The judgment relied upon by learned counsel for the appellants passed in *Anathula Sudhakar* case(*supra*) has no application to the facts of this case. The ratio of the judgment is that the relief of injunction simplicitor cannot be sought by a person whose title over the property is in dispute. As mentioned above, plaintiffs' title over the suit property was not in dispute, though the defendants made a deplorable attempt to dispute the same by concealing relevant facts from the Court. Therefore, the defendants cannot raise any plea based upon the judgment.

11. In view of the aforesaid, there is no ground to interfere with the findings recorded by Courts below affirming ownership and possession of the plaintiffs over the suit property. No substantial question of law arises for consideration.

12. The appeals are without merits, and are accordingly dismissed with costs.

13. Pending application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

04.11. 2022
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes