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

RSA No.1261 of 2020 (O&M)

Reserved on : 27.07.2022

Date of Decision : 29.07.2022

Dalbir Singh & Another

.....Appellants

versus

Kundan Singh (Deceased) through his LRs & Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Balbir Singh Jaswal, Advocate for the appellants

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellants against the judgments and decrees passed by both the Courts below dismissing their suit for declaration and permanent injunction.

The brief facts relevant to the present *lis* are that the plaintiff-appellants instituted a suit seeking a declaration declaration to the effect that they are lessees in possession of land measuring 1 Kanal 11 Marlas in Khasra No.70/14/2 situated in village Kala Ghanupur Sub Urban, Tehsil and District Amritsar and that the entries corrected in the name of the defendant-respondents in CWP No.23145 of 2010 titled as 'Kundan Singh Vs. Financial Commissioner and Others' as per order dated 02.03.2012 passed by the Hon'ble High Court is erroneous. The plaintiff-appellants also sought a permanent injunction restraining the defendant-respondents from alienating selling, mortgaging or transferring the suit land in any

manner in favour of anybody else till the final disposal of the suit and further restraining the defendant-respondents from interfering in the peaceful possession of the plaintiff-appellants over the suit land.

It was pleaded that the heirs of one Khazan Singh were tenants in possession of certain land and had transferred their lessee rights by way of lease deed dated 26.03.1969 for a period of 99 years in favour of the plaintiff-appellants. The lease period of 99 years commenced from 29.03.1969 up to 28.03.2068. It was submitted that the plaintiff-appellants had stepped into the shoes of the heirs of Khazan Singh and that they had become lessees in possession of the land, including the suit land, and that the entire lease money was paid by the plaintiff-appellants to the lessors for 99 years and the plaintiff-appellants being are in possession of the land on the basis of the aforesaid lease deed. The Khasra Girdawri was also ordered to be corrected by the revenue officials in favour of the plaintiff-appellants. However, the defendant-respondents had filed CWP. No.23145 of 2010 in the Hon'ble High Court wherein the orders vide which correction of Khasra Girdawri was made in the name of the plaintiff-appellants were set aside while giving the plaintiff-appellants liberty to approach the Civil Court for redressal of their grievances if they think that the entries are wrong. It was further averred that the defendant-respondents had got the entry changed and were now threatening to interfere in the possession of the plaintiff-appellants and to alienate, sell, mortgage or transfer the suit land. Hence the suit.

On notice, the defendant-respondents appeared and filed written statements contesting the suit. Preliminary objections regarding

maintainability, locus standi, maintainability, court fee and non-joinder of parties were raised. The defendant-respondent No.1 in his written statement took the stand that the suit land in Khasra No.70/14/2 was never part of the lease in favour of the plaintiff-appellants and that the plaintiff-appellants had tried to take forcible possession of the suit land. It was further submitted that the defendant-respondent No.1 is a co-sharer to the extent of 1/6 share in the suit land that the suit land also belonged to Swaran Singh. Defendant-respondent No.2 filed a separate written statement controverting the allegations made in the plaint and submitted that the revenue record having been corrected in terms of the order of the Collector, Amritsar, it was the defendant-respondent No.2 who was in possession of the suit land.

The following issues were framed by the Trial Court :

1. Whether plaintiff is entitled for the relief of declaration as prayed for ? OPP
2. Whether plaintiff is entitled for the relief of permanent injunction as prayed for ? OPP
3. Whether suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has got no locus standi to file the present suit ? OPD
5. Whether the present suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
6. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from the court ? OPD

7. Whether suit of the plaintiff is not valued for the purpose of court fee and jurisdiction ? OPD
8. Relief.

Vide judgement and decree dated 30.05.2017 the Trial Court, on the basis of the pleadings of the parties and the evidence on the record, dismissed the suit of the plaintiff-appellants. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellants which was also dismissed vide judgment and decree dated 16.09.2019. The Courts below found that the plaintiff-appellants had failed to prove their possession as lessees over the suit land. Hence, the present regular second appeal.

The learned counsel for the plaintiff-appellants has vehemently contended that the plaintiff-appellants are in possession of the suit land as lessees as per lease deed dated 16.03.1969 Ex.P1 and also as per order dated 16.03.2010 Ex.P5 passed by the Financial Commissioner and they were thus entitled to the declaration in their favour and also to the grant of an injunction against the defendant-respondents. It has further been contended that the revenue officials had decided the matter in favour of the plaintiff-appellants and though these orders were set aside by this Court in CWP. No.23145 of 2010, liberty was granted to the plaintiff-appellants to agitate the issue before the civil court. It was submitted that the Courts below have misinterpreted the order passed in CWP. No.23145 of 2010.

Heard.

In the present case the plaintiff-appellants had approached the Court contending that the suit land was leased to them for 99 years vide

lease deed dated 16.03.1969 Ex.P1. Order Ex.P5 was also passed in their favour by the Financial Commissioner. However, this order was set aside by this Court in CWP. No.23145 of 2010. Further, the evidence on the record, including a judgement and decree Ex.D3 passed in another suit, belies the claim of the plaintiff-appellants. The lower Appellate Court also noted that the jamabandi Ex.P4 and the deposition of PW2, Manjit Singh, produced by the plaintiff-appellants did not support their stand. A perusal of the judgments and decrees passed by both the Courts below reveals that both the Courts below have concurrently held that the plaintiff-appellants had been unable to prove their exclusive possession over the suit land as lessees. The plaintiff-appellants having failed to prove their status as lessees in the suit land and having failed to prove their exclusive possession were rightly non-suited by both the Courts below.

In view of the above and the concurrent findings of fact returned by both the Courts below, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

29.07.2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO