

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

137

RSA-430-2023(O&M)  
Date of Decision: 07.12.2023

Ajaib Singh and another

....Appellants

Versus

Des Raj and others

....Respondents

**CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Gulzar Mohammed, Advocate for the appellants.

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**SANJAY VASHISTH, J.(Oral)**

1. Present regular second appeal has been filed by the plaintiffs against the concurrent findings of dismissal of civil suit.
2. Plaintiffs filed the civil suit for permanent injunction restraining the defendants, their agents/attorneys, associates from making any type of construction or taking forcible possession of the premises/open Taur, located in Khewat No.158, Khatauni No.292, Khasra No.562 (12-0) situated in Village Soorje, Tehsil Phillaur as per Jamaband for the year 2004-05 and Khewat No.158, Khatauni No.290, Khasra No.562 situated in Village Soorje, Tehsil Phillaur as per jamabandi for the year 2009-10, which is in the lawful possession of the plaintiffs being its lawful owner
3. As per the pleaded case of the plaintiffs, the property in dispute i.e. Khasra No. 562(12-0) is ancestral property of the plaintiffs, who are co-owners of the said property. Defendants have

been declaring it openly that they will convert the said Khasra No.562 (12-0) by taking forcible possession and re-naming it as Dr. Ambedkar Bhawan. For the said purpose, defendants have been laying bricks and other material on the spot for the purpose of said construction.

4. In the joint written statement filed by the defendants, it was pleaded that in a column of ownership in the Jamabandi, it is clearly mentioned that the suit land pertains to Section 42-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The suit land was reserved for common purposes, thus, cannot be partitioned amongst the proprietors of the Village whether specified or not in consolidation scheme. The Gram Panchayat has already passed a resolution to construct Dr. Ambedkar Park and other work to be carried out in Khasra No.562 (12-0). It is also pleaded that when the place of statute of Dr.Ambedkar was shifted from one side to another side of Khasra number in dispute, a compromise was effected in writing between the members of Gram Panchayat and Villagers and plaintiff No.1 was also signatory to the said compromise. On merits, it is clearly denied that disputed Khasra number is the ancestral property of the plaintiffs.

5. After framing of the issues and leading of the evidence, suit filed by the plaintiffs was dismissed by learned trial Court and thereafter, when the proceedings were taken by the plaintiffs themselves in the first appeal, fate of dismissal of the suit was again maintained. By giving a detailed finding in paragraph No.12, the

learned Appellate Court upheld the dismissal of the civil suit as decided by learned trial Court. Paragraph No. 12 of learned First Appellate Court says as under:

*'12. I have my thoughtful consideration to the rival contentions of both the parties. The present suit is the simple suit for injunction and to succeed in the same, the appellants have to prove their possession over the suit property. It is also settled law that in a suit for permanent injunction, question regarding title of the suit property cannot be determined and in such like suit, the only relevant factor is the possession over the suit property. In the present case, the stand of the appellants is that earlier, the suit property was low lying area, due to which, water used to stagnate in the suit property and suit property has become a pond, whereas on the other hand, the stand of the respondents is that suit property was reserved for common purposes. Earlier, it was being used as pond and now, the pond has been shifted to another place and the suit property is being used as Ambedkar Park, where statue of Dr.B.R.Ambedkar has been installed and Dr. Bhim Rao Ambedkar Welfare Society is maintaining the said park. Though, the respondents have not led any evidence to prove that suit property was left for common purposes at the time of consolidation, but since the present suit is for permanent injunction, so this Court is concern with the possession of suit property. After critically analyzing the record of the case, this Court is of the view that the pleadings of the appellants and cross-examination of PW-1 Ajaib Singh and PW-2 Dilbagh Singh is very important to determine the possession over the suit property. PW-1 Ajaib Singh has clearly stated in his cross-examination that in June, 2013 statute of Dr.B.R.Ambedkar has been installed in the suit property and that he has not moved any application before any authority against installation of said statute in the suit property. He has further stated that statute of Dr.B.R.Ambedkar is installed at only one place in the village. He has further stated that he has not filed any suit at the time when the statute was installed in the village. PW-2 Dilbagh Singh has also clearly stated in his cross-examination that earlier, there was a pond in the suit property and the village panchayat has shifted the said pond to another place. Though, both these witnesses have stated in their respective cross-examination that statute of Dr. B.R.Ambedkar is in some other land but, as stated above, both these witnesses have clearly stated in their cross-*

*examination that statute of Dr. B.R.Ambedkar is installed only at one place and that said statute is in the southern corner of the suit property. Moreover, in para no.4 of the plaint, the appellants have clearly pleaded that respondents have recently installed the statue of Dr. B.R.Ambedkar in the southern nook of the khasra number in dispute itself. In the very next line, they have pleaded that the statue is not installed in the khasra number in dispute itself. Thus, from the pleadings of the appellants, it is clear that they are not clear whether the statue of Dr. B.R.Ambedkar is in the suit property or outside the suit property. However, keeping in view the admission of PW-1 Ajaib Singh and PW-2 Dilbagh Singh that statue of Dr. B.R.Ambedkar is installed only at one place in the village and that in June 2013, the said statue was installed in the suit property, this Court is of the opinion that the appellants have not been able to prove their actual possession over the suit property. Moreover, from the pleadings of the parties, it emerges that earlier, the suit property was being used as pond and now, the Gram Panchayat has laid a pipe line adjoining the suit property and shifted the pond to another place. As per the revenue record on the file, there are numbers of co-sharers in the suit property, but none of them has been examined by the appellants to prove that they are in possession of the suit property.'*

6. I have heard learned counsel for the appellants at length and examined the reasoning given by both the Courts below, no question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands dismissed.

December 07, 2023  
rashmi

**[SANJAY VASHISTH]**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable?

yes/no  
yes/no