

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

RSA-2226-1992(O&M)

Date of decision:-10.4.2023

Darshan Singh and another

...Appellants

Versus

Amar Singh (since deceased) through legal representative and ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.J.S. Virk, Advocate
for the appellants.

Mr.Manish Jain, Advocate with
Mr.Mayur Kanwar, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Amar Singh and Kartar Chand had filed a suit for grant of permanent injunction against defendants Kamal Dev, Darshan Singh, Azad Singh and Sarwan Singh, alleging that they were in possession of suit land measuring 27 kanals 18 marlas as tenants on CHAKOTA under the ownership of Darshan Parkash etc., however, the defendants threatened to forcibly dispossess the plaintiffs from the suit land on strength of some sale deeds, as such the plaintiffs had filed the suit in question.

2. On getting notice, the defendants No.1 to 3 put in appearance and contested the suit, whereas defendant No.4 did not appear despite service and as such was proceeded against ex-parte.

3. As per the version set up by the defendants, Darshan Parkash etc. had no right, title or interest in the suit land; their names were wrongly appearing in the revenue record for some time and that mistake was got rectified; Darshan Parkash etc. could not have granted any tenancy in favour of the plaintiffs and plaintiffs did not come into possession of the suit land in any capacity; as a matter of fact, the suit land was owned and possessed by the Government and it was allotted to Lal Chand son of Mazar Dass from whom defendants No.1 to 3 had purchased the same vide registered sale deeds dated 24.2.1987 and as such they came in possession; earlier to them, their vendor Lal Chand was in possession of the suit land as owner. The defendants admitted that Panjab Singh son of plaintiff No.1 Amar Singh had got executed sale deed on 11.12.1987 for an area of 8 kanals in khasra No.130R/19(8-0) out of the suit land from defendant No.4 Sarwan Singh. Raising various other objections, the claim of the plaintiffs was strongly opposed.

4. Issues on merits were framed and the parties were afforded opportunities to lead evidence in support of their respective claims.

5. After hearing the learned counsel for the parties, the trial Court of Sub Judge Ist Class, Anandpur Sahib decided issues No.3 and 4 in favour of defendants No.1 to 3 holding that allotment of the suit land to Lal Chand was there; issue No.1 was decided holding that it is proved that plaintiffs are in possession of the entire suit land; Khasra No.130R/19(8-

0) is in their possession because Panjab Singh son of plaintiff No.1 had purchased it from defendant No.4, whereas remaining land is in possession of the plaintiffs as trespassers and that their status as tenants under defendants No.1 to 3 is not proved. As a result of finding on issues, the suit of the plaintiffs was decreed against defendants No.1 to 3 with costs for permanent injunction restraining them from interfering in the possession of the plaintiffs over khasra No.130R/19(8-0). The suit was also decreed with cost against defendants No.1 to 3 for interfering in the possession of the plaintiffs over khasra Nos.116R/14/2(7-7), 17(7-11), 134R/21(4-0), 135R/25/3(1-0) except in due course of law. This was so done vide judgment and decree dated 22.12.1989

6. Feeling aggrieved by the said judgment and decree, the defendants No.1 to 3 had filed an appeal in the Court of District Judge, Ropar, notice of which was given to the respondents, who put in appearance. During the pendency of those proceedings, Azad Singh – appellant and Gian Chand attorney of other appellants along with their counsel had made a statement that appellants had already filed a suit for possession of the land in the Court of Sub Judge, Anandpur Sahib and the appeal may be dismissed as withdrawn as the same was not to be prosecuted.

7. In view of such statement, learned District Judge, Ropar vide order dated 5.5.1992 dismissed the appeal as withdrawn.

8. Later on, the appellants/defendants had filed an application under Order 47 Rule 1 CPC to review order dated 5.5.1992 contending that the appeal had been withdrawn on wrong instructions on account of

misunderstanding and actually the applicants are in possession of the suit land.

9. That application was contested by the respondents.

10. Vide order dated 9.10.1992, the application was dismissed.

For ready reference, para No.6 of the order is being reproduced as under:

6. *The learned counsel for the applicants had contended that the applicants had filed a suit for permanent injunction in the Civil Court at Anandpur Sahib and not for possession of the land that and labouring under misunderstanding, the applicants have been made to withdraw the appeal. The learned counsel had endeavoured to seek support from “M/s Hindustan Sugar Mills Versus The State of Rajasthan and others” AIR 1981 Supreme Court 1681. But this judgment is not applicable to the facts of this case. The learned counsel for the respondents, however, had contended that the said order could not be reviewed. The contention of the learned counsel for the respondents has substance in it. In this respect, I seek strong support from “Chiyoda Corporation Versus National Fertilizer Ltd.” 1992(2) PLR Delhi Section 45. That was a case where a counsel for the plaintiff had made statement that the plaintiff did not want to proceed against one of the defendants the suit against the said defendant was dismissed. Thereafter an application was moved by the plaintiff for setting aside the order of dismissal and for the restoration of the suit on the ground that the said statement was made inadvertently and undermistake. Declining the prayer, it has been held in this*

judgment that the Court after passing a decree becomes functus officio and has got no power to review and revive its own judgment. The ratio of this authority is fully applicable to the facts of this case and so, the prayer to re-hear the appeal after setting aside the said judgment and decree cannot be accepted. The application is, therefore, dismissed with no order as to costs.

11. Being dissatisfied, the defendants have filed the present regular second appeal before this Court, notice of which was issued to the respondents, who put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

13. The appellants themselves had withdrawn the appeal from the Court of learned District Judge Ropar making a statement that they had since filed a suit for possession of suit land before Sub Judge, Anandpur Sahib. The order had been passed in presence of Azad Singh appellant and Gian Chand, attorney of other appellants with counsel as well as counsel for the respondents. There could not be any question of misrepresentation or lack of communication between the appellants and their counsel. It seems that after making the statement, the appellants had a second thought and then moved an application for review of the order claiming themselves to be in possession of the suit land. That application was dismissed vide a detailed and well reasoned order by learned District Judge, Ropar. The reasoning given by learned District Judge, Ropar is

cogent and convincing. The order does not suffer from any illegality or infirmity.

14. The appellants having themselves withdrawn the appeal from the Court of learned District Judge, Ropar, the decree passed by the trial Court has become final and binding on them and now they cannot challenge the same by way of filing regular second appeal.

15. The regular second appeal is thus doomed for failure and is dismissed accordingly.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

10.4.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No