

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

RSA-193-1989(O&M)

Reserved on:-2.5.2023

Date of Pronouncement:-9.5.2023

Darshan Singh and others

...Appellants

Versus

Jamiat Singh and another

...Respondents

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

Present: Mr.H.R. Bhardwaj, Advocate
for the appellants.

Ms.Aashna Gill, Advocate
for respondent No.1.

Mr.Davinder Kumar, Advocate for
Mr.PKS Phoolka, Advocate
for respondent No.2.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Darshan Singh and eight others, all residents of village Behman Dewana, Tehsil and District Bhatinda had brought a suit against defendants Jamiat Singh and Hakam Singh, residents of village Mehma Sarja, Tehsil and District Bhatinda, seeking possession of agricultural land measuring 76 kanals 16 marlas situated within the revenue limits of village Mehma Sarja, Tehsil and District Bhatinda. Such land being fully described in the head-note of the plaint.

2. As per the case of the plaintiffs, defendant Jamiat Singh was the owner of the suit land as co-sharer but he was in exclusive possession thereof; Amar Singh son of Wadhawa Singh grandfather of plaintiffs No.1 to 5 and father of plaintiffs No.6 to 10 had purchased the suit land from Jamiat Singh defendant and mutation No.5312 dated 28.6.1966 was entered in respect thereof; after the death of Amar Singh, the plaintiffs stepped into his shoes being his only LR's, in that way, the plaintiffs are owners of the suit land; a portion of the suit land was under mortgage with different persons but the plaintiffs had already paid the mortgage amount; the land is free from encumbrances; the plaintiffs were in possession of the suit land being co-sharers in the joint khata but about 6 months before filing of the suit (suit was filed on 7.6.1983), the defendants dispossessed the plaintiffs from the suit land without any right; defendant No.1 is illegally helping defendant No.2 to retain possession of the suit land. On refusal of the defendants to admit the claim of the plaintiffs, they have brought the suit in question.

3. On notice only defendant No.1 put in appearance and offered a contest. He filed written statement wherein he had taken various legal objections, on merits contending that the defendant had not sold the land in favour of the plaintiffs and the plaintiffs are not owners in possession of the suit land; even defendant No.1 has constructed a house in suit land by spending Rs.25,000/-; in case any sale deed is proved in favour of the plaintiffs, then the answering defendant is in adverse possession of the suit land for a period of more than 12 years and he has become owner thereof. The stand taken in the preliminary objections has been reiterated

while opposing the assertions in the plaint. It is admitted that the suit land was under mortgage with Jagar Singh and Vir Singh; however the defendants paid the mortgage amount and got the land redeemed and obtained the possession from them. Such defendant denied that plaintiffs had got the land redeemed after paying the mortgage amount. The defendants claimed themselves to be in possession of the suit land and by way of adverse possession becoming owners thereof. In the end, the defendant prayed for dismissal of the suit.

4. The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are owners of the suit land? OPP.
2. Whether the suit is within liitation? OPP.
3. Whether the defendant NO.1 is in adverse possession of the suit land, if so its effect?OPD.
4. Whether the suit is bad for misjoinder and non-joinder of necessary parties? OPD.
5. Whether the defendant is entitled to special costs as alleged? OPD.
6. Relief.

5. The parties led evidence in support of their respective claims.

6. After hearing learned counsel for the parties, the trial Court of Sub-Judge Ist Class, Bhatinda by giving issue-wise findings dismissed the suit of the plaintiffs leaving the parties to bear their own costs. This was so done vide judgment and decree dated 13.9.1986.

7. Feeling aggrieved by the said judgment and decree, the

plaintiffs had filed an appeal in the Court of District Judge, Bhatinda, which was assigned to Additional District Judge, Bhatinda, who vide judgment and decree dated 3.9.1988 dismissed the same upholding the judgment and decree passed by the trial Court.

8. Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

9. Notice of the appeal was issued to the respondents, who put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. Here with regard to finding of facts both the Courts are unanimous. Though from the evidence brought on record by the parties, it was concluded that the land of Jamiat Singh had been sold in execution of decree by Sub Judge in case 'Amar Singh Versus Jamiat Singh' but there was nothing to show that possession had been delivered to Amar Singh in pursuance of the sale certificate issued to him. Some of the land of Jamiat Singh was found to be mortgaged and not yet redeemed. This being the state of affairs and Jamiat Singh having been found to be in continuous possession of the land, his possession fulfilling the ingredients of adverse possession, he was found to have become owner by way of adverse possession. Although the case of the plaintiffs was that Amar Singh had obtained possession from the mortgagee after paying the mortgage amount but some time before filing of the suit, the defendant had taken

forcible possession of the suit land but then it was found that no entry was there in the revenue record with regard to Amar Singh getting the mortgage redeemed and taking possession from the mortgagees. As a matter of fact, no revenue document supports the case of the plaintiffs in that regard. Although the plaintiffs had examined PW1 Jagar Singh, who had deposed that defendants had mortgaged three killas of land with him for Rs.3,200/- and after obtaining Rs.3,200/- from Amar Singh, he had redeemed the land in favour of Amar Singh but then in his cross-examination, he could not tell the khasra numbers of the land, which were mortgaged with him and who had attested the receipt Ex.P2. PW2 Parmanand had testified that Jamiat Singh had mortgaged his land with him for Rs.1,400/-, which had been purchased by Amar Singh in Court auction; he had obtained mortgage amount from Amar Singh and redeemed the land in his favour; endorsement to that effect being Ex.PW2/B. In his cross-examination, he was unable to tell as to who had scribed the receipt and who had attested the same. He was unable to tell the area of the suit land. Similarly PW3 Gurbax Singh had testified about Jamiat Singh mortgaged land with him for Rs.2,400/- and vide Ex.PW3/A, he had obtained amount from Amar Singh leaving the possession in his favour. In his cross-examination, he could not say as to who had scribed the receipt. He further stated that he had not reported the matter to Patwari. Similarly testimony of PW4 Vir Singh in whose favour Jamiat Singh had mortgaged some land for Rs.1,200/- and who claimed that it was got redeemed by Atma Singh. He does not sound very convincing. Similarly testimony of Amar Nath PW5 would not helpful to

the plaintiffs in advancing their case. Therefore, the plaintiffs have failed to establish that Amar Singh had come in possession of the suit land after getting it redeemed from the mortgagors or that defendants had taken forcible possession thereof from them some time before filing of the suit.

On the other hand, the defendants are found to have become owners in possession of the suit land by way of adverse possession.

12. I find that the verdict given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

13. No substantial question of law or fact arises in this appeal.

14. The appeal stands dismissed accordingly.

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

9.5.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No