

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

RSA No. 1370 of 1991

DATE OF DECISION :- January 19, 2023

Taripu and another

...Appellants

Versus

Chander Singh and another

...Respondents

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

Present:- None for the appellants.

Mr. Abhilaksh Grover, Advocate for the respondents.

As per report by the Registry, counsel for the appellants has been informed but has not turned up. Since the appeal relates to the year 1991, I proceed to decide the same after hearing learned counsel for the respondents and going through the record.

Briefly stated facts of the case are that plaintiffs Sube Singh and Tripu, sons of Sadan, residents of Assaudha, Tehsil Bahadurgarh, District Rohtak had brought a suit against defendants Chander Singh, Parbhu and Bed Ram, who are none else but their real brothers, all residents of that very same village seeking a decree for permanent injunction restraining the defendants from interfering into their possession over the plot in suit fully described in Head note of the plaint situated within Abadi of Village Assaudha.

According to plaintiffs that property which is in the form of gher came into their share in a normal partition which had taken place between the parties about 12 years prior to filing of the suit (suit was filed

on 14.12.1984). The plaintiffs had further contended that they are in exclusive possession of property as owners with which defendants have no concern even then they threatened to interfere in their possession giving rise to a cause of action to the plaintiffs to bring the suit in question.

On getting notice, the defendants appeared and filed written statements contesting the suit raising various legal objections on merits contending that actually they are in possession of the suit property using it for the purpose of storing tethering cattle, cow dung cakes and there are pegs and tress belonging to them are standing there and a hand pump is also installed in that property. A wall on the southern side has been constructed. On other side there is barbed wire fencing. The defendant denied the assertions in the plaint. On the pleading of the parties following issues were framed :-

1. Whether the gher in dispute came to the share of the plaintiff about 12 years back as alleged in para no. 2 of the plaint and thus plaintiff become owner and in possession of the gher? OPP
2. Whether the suit is not maintainable in the present from ? OPD
3. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD.
4. Relief.

The parties were afforded opportunity to lead evidence.

After hearing arguments, the trial Court of Sub Judge First Class, Bahadurgarh vide judgment dated 28.5.1990 decreed the suit of the plaintiffs restraining the defendants from interfering in peaceful possession of of the plaintiffs over suit property except in due course of law.

Feeling aggrieved, the defendants had preferred an appeal before District Judge, Rohtak which was assigned to Additional District Judge Rohtak, who vide judgment and decree dated 4.4.1991 accepted the appeal observing that plaintiffs have been unsuccessful in proving their ownership or possession over the plot in suit. Learned Additional District Judge had further observed in his judgment that the family settlement is said to have taken place between the parties about 12 years before filing of the suit which could not be proved by plaintiffs and since as admitted by them the plot was joint between the parties earlier, in absence of any cogent and convincing evidence to show that any family partition had taken place in which plot in suit had fallen to the share of the plaintiffs they were not entitled to discretionary relief of permanent injunction.

Feeling aggrieved the plaintiffs had approached this Court by way of filing appeal, notice of which was given to the defendants respondents, who have put in appearance, however, there has not been any representation on behalf of appellants since long. Notice to counsel for the appellants was issued but he did not come present.

After hearing learned counsel for the respondents and going through the record I find that the First Appellate Court by close scrutiny of the pleading and considering the evidence adduced by both the parties had reached a correct conclusion that plaintiffs were unable to prove that they are in exclusive possession of the plot in suit. It being so, they were not entitled to relief of permanent injunction. The judgment passed by learned Additional District Judge, Rohtak is based on proper appraisal of evidence and correct interpretation of law. No illegality or infirmity is found there

with, whereas judgment passed by the trial Court comes out to be mainly based upon assumptions and conjectures. That was rightly set aside by the First Appellate Court.

There is no merit in this appeal. No substantial question of law arises. The appeal stands dismissed.

(H.S. MADAAN)
JUDGE

January 19, 2023
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No