

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

RSA-1275-1991(O&M)

Date of decision:-21.2.2023

Milkha Singh

...Appellant

Versus

Mewa Singh and another

...Respondents

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

Present: Mr.C.L. Sharma, Advocate
for the appellant.

None for the respondents.

H.S. MADAAN, J.

1. Briefly summed up, the facts of the case are that plaintiff Milkha Singh had brought a suit against defendants Mewa Singh and his son Karnail Singh, seeking a decree for permanent injunction restraining the defendants and persons claiming under them from interfering in cultivating possession of the plaintiff over the suit land measuring 1 kanal 0 marla comprised in Khasra No.274/4 situated at village Parmanand, Tehsil Pathankot.

2. As per the case of the plaintiff, he had taken the suit land on licence from its owner Punjab Wakf Board, Ambala Cantt. on payment of licence fee; in 1/2 portion of the suit land, he has

constructed a Kotha, whereas the remaining portion is lying vacant and is in his exclusive possession. Defendants have no concern therewith but even then, they threatened to dispossess the plaintiff therefrom illegally and forcibly, giving rise to a cause of action to the plaintiff to bring the suit.

3. On getting notice, the defendants appeared and filed a written statement contesting the suit, denying the averments therein, rather coming up with a version that as a matter of fact, the defendants have been in possession of the suit land as licensee under the Punjab Wakf Board and plaintiff is neither in possession nor having any concern with this land. The defendants prayed for dismissal of the suit.

4. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff has been in possession over the disputed land as leasee under the Punjab Wakf Board as alleged? OPP.
2. Whether the plaintiff is entitled to permanent prohibitory injunction as prayed for through this suit? OPP.
3. Whether this suit is liable to be dismissed with compensatory costs u/S 35A CPC if so to what amount? OPD.
4. Relief.

5. The parties were given opportunities to lead evidence in support of their respective claims.

6. After hearing learned counsel for the parties, the trial Court of Sub Judge Ist Class, Pathankot decided issue No.1 partly in favour of the plaintiff and partly in favour of defendants holding that plaintiff was in exclusive possession of only 9 marlas of land; issue No.2 was also decided accordingly; issue No.3 was decided against the defendants being not pressed. Resultantly, suit of the plaintiff was decreed partly for the permanent injunction against defendants restraining them from dispossessing the plaintiff from the portion of disputed land measuring 10 x 8 karams i.e. 9 marlas, fully described towards the end of the report as well as shown in red in the site plan furnished by the Local Commissioner illegally, forcibly, otherwise then in due course of law. Whereas the suit regarding remaining portion of disputed land measuring 11 marlas was dismissed. This was so done vide judgment and decree dated 1.3.1989.

7. Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Gurdaspur, which was assigned to Additional District Judge, Gurdaspur, who vide judgment and decree dated 7.2.1991 accepted the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff.

8. Now it was the turn of the plaintiff to feel dissatisfied with the judgment and decree passed by Additional District Judge, Gurdaspur and he has knocked at the door of this Court by way of

filing a regular second appeal praying that the same be accepted, the impugned judgment and decree passed by Additional District Judge, Gurdaspur be set aside and the suit filed by him be decreed.

9. On getting notice of regular second appeal, initially the respondents had appeared before this Court through counsel. However, later on there was no representation on their behalf.

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

11. I perusal of the judgment and decree passed by the trial Court goes to show that the trial Court has conveniently ignored the revenue record and placed heavy reliance upon the report of Local Commissioner while coming to the conclusion that the plaintiff is in exclusive possession of 9 marlas of land. However, the Appellate Court of learned Additional District Judge, Gurdaspur has referred to the revenue record showing that defendant No.1 is in possession of 4 kanals of land as a lessee of Punjab Wakf Board, which includes the suit land. With regard to the appointment of Local Commissioner, the First Appellate Court has observed that the judgment and decree dated 1.3.1989 passed by the trial Court is in fact not that of lower Court but of Local Commissioner, Sh.Kewal Krishan, Kanungo and as a matter of fact the report by the Local Commissioner was not even exhibited or tendered in evidence by the respondent/plaintiff. His statement was not recorded in the Court. The demarcation was not

carried out as per the instructions on the subject and law and none of the witness mentioned in the report of Local Commissioner was produced before the trial Court. For such like reasons, the judgment and decree passed by the trial Court were set aside and suit filed by the plaintiff was dismissed.

12. I do not find anything wrong with the judgment and decree passed by the First Appellate Court of learned Additional District Judge, Gurdaspur, setting aside the judgment and decree passed by the trial Court, which suffered from various illegalities and infirmities. The judgment passed by Additional District Judge, Gurdaspur is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court by way of accepting the regular second appeal.

13. No substantial question of law 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.

21.2.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No