

108-1

2023:PHHC:048657

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1113 of 2022 (O&M)
RESERVED ON : 29.03.2023
DATE OF DECISION : 11.04.2023

Jarnail Singh and Another

.....Appellants

versus

Dalip Singh and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Kashyap, Advocate for
Dr. Naresh Kaushik, Advocate for the appellants

..

ALKA SARIN, J.

The present appeal has been preferred by the defendant Nos.1 and 2 against the judgment and decree dated 06.05.2022 passed by the First Appellate Court reversing the judgment and decree dated 18.03.2019 passed by the Trial Court whereby the suit of the plaintiff-respondent No.1 had been dismissed.

Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for permanent injunction for restraining the

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defendant-appellants and others from forcibly and illegally dispossessing the plaintiff-respondent No.1 from the suit land measuring 59 kanals - 13 marlas situated in the area of Village Luluwala, Tehsil Zira as fully described in the plaint. The plaintiff-respondent No.1 claimed to have become owner in possession of the suit land on the basis of a Will dated 30.11.2015 executed by Gurbax Singh. Based on the Will, a mutation was also entered. It was further the case of the plaintiff-respondent No.1 that he was in peaceful cultivating possession of the suit land and that the defendant-appellants and others had tried to forcibly dispossess him and harvest the wheat crop. The suit was contested by the defendant-appellants. Defendant-appellant No.1 Jarnail Singh claimed himself to be the adopted son of deceased Gurbax Singh and stated that the Will set up by the plaintiff-respondent No.1 was forged and fabricated. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for permanent injunction as prayed for (*sic*) ? OPP
2. Whether the suit of the plaintiff is false, frivolous, vexatious as prayed for? OPD
3. Whether the plaintiff has not come to the Court with clean hands? OPD
4. Relief.

The Trial Court, holding the Will not to be a valid Will, held that even if the plaintiff-respondent No.1 was in possession, yet relief of permanent injunction could not be granted. The suit was accordingly dismissed. The First Appellate Court upheld the validity of the Will and

further on the basis of the jamabandi 2011-2012 (Ex.P1) held that Gurbax Singh was shown as the previous owner in possession of the suit land and there was an entry of Mutation No.1259 in favour of the plaintiff-respondent No.1 on 23.05.2016 and that the plaintiff-respondent No.1 had also mortgaged 33 kanals - 10 marlas of land in favour of State Bank of Patiala, Makhu vide Rapat No.42 of 23.09.2016 (Ex.P20). Hence, holding the plaintiff-respondent No.1 to being in possession, the First Appellate Court allowed the appeal preferred by the plaintiff-respondent No.1 and reversed the judgment and decree passed by the Trial Court. Aggrieved by the said judgment and decree dated 06.05.2022 passed by the First Appellate Court, the present regular second appeal has been preferred by the defendant-appellants.

Learned counsel for the defendant-appellants would contend that in view of the fact that the Will itself was not proved on the record, the First Appellate Court erred in decreeing the suit of the plaintiff-respondent No.1. The learned counsel further contended that the Will itself was shrouded by suspicious circumstances and further that the plaintiff-respondent No.1 was not in possession of the suit land.

Heard.

In the present case the suit was for simpliciter injunction. The Trial Court was only to see whether the plaintiff-respondent No.1 had proved his possession over the suit land. However, the Trial Court totally misdirected itself by going into the issue of the validity of the Will. Infact, there is no discussion regarding the possession of the plaintiff-respondent

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No.1 based on the evidence on the record. The First Appellate Court on the basis of the jamabandi for 2011-2012 (Ex.P1), which showed Gurbax Singh as owner in possession of the suit land and thereafter Mutation No.1259 in favour of the plaintiff-respondent No.1 on 23.05.2016 as also on the basis that the plaintiff-respondent No.1 had mortgaged 33 kanals 10 marlas of land in favour of State Bank of Patiala (Ex.P20), held that the possession of the plaintiff-respondent No.1 was proved. There is no evidence on the record to the contrary to show that the defendant-appellants are in possession of the suit land.

In view of the findings of fact returned by the First Appellate Court, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The present appeal, which is wholly devoid of any merit, accordingly stands dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

11.04.2023
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<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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