

112 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2193-2022 (O&M)

Date of Decision : 21.02.2023

Balkar Singh ...Appellant

versus

Buta SinghRespondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Lupil Gupta, Advocate for the appellant.

B.S. Walia, J. (Oral).,

1. Challenge in the instant Regular Second Appeal is to judgment dated 22.08.2022, passed by the learned Addl. District Judge, Ferozepur, dismissing Civil Appeal No.147/2018 and upholding the judgment and decree dated 07.12.2017, passed by the learned Civil Judge (Junior Division), Guruharsahai, whereby the suit of the respondent/plaintiff was decreed and the appellant/defendant restrained from causing any interference in the peaceful and lawful possession of the respondent/plaintiff over land measuring 1 Kanal 15 Marlas comprised in Khewat No.123/119, Khatoni No.250, Rect. No.10, Killa No.26 min (1-15), situated in the revenue estate of village Kari Kalan, Tehsil Guruharsahai, District Ferozepur, as per jamabandi for the year 2012-2013.

2. Learned Counsel contends that the respondent/plaintiff had filed a civil suit for permanent injunction for restraining the appellant/defendant from causing any interference in any manner in the peaceful and lawful possession of the respondent/plaintiff over the suit

land as mentioned in paragraph No.1 above and on the basis of pleadings

of the parties, the following issues were framed :-

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
2. Whether the present suit is not maintainable? OPD
3. Relief.

3. Thereafter, on the basis of evidence led by the parties and submissions advanced, the learned trial Court decided the issues in favour of the respondent/plaintiff and against the respondent/appellant and the judgment and decree passed by the learned trial Court dated 07.12.2017 was upheld by the learned Addl. District Judge, Ferozepur.

4. Learned Counsel contends that the judgment and decree of the Courts below do not take into account the evidence on record in the correct perspective, therefore, are legally unsustainable and liable to be set aside and the suit dismissed.

5. I have considered the submissions of learned counsel.

6. Admittedly, the claim of the respondent/plaintiff was that he was in possession of land measuring 1 Kanal 15 Marlas as mentioned in paragraph No.1 above and which belonged to the Provincial Government/Central Government but that he had been cultivating the same since long and earlier the entries of khasra girdwaris were recorded in his name and the appellant/defendant had no right, interest, title or concern whatsoever with the same. The respondent/plaintiff in order to substantiate his claim tendered in evidence his duly sworn affidavit as Ex.PW1/A, reiterating the facts as mentioned in the plaint and also relied upon copy of jamabandi for the year 2012-2013 (Ex.P1), copy of khasragirdwari of Sauni 2008 to Harri 2013 (Ex.P-2), copy of khasragirdwari of Sauni 2013 to Harri 2016 (Ex.P-3), copy of khasra

girdwari of Sauni 2013 to Harri 2016 (Ex.P-4) besides examined Harwinder Singh as PW-2 and Raj Kumar as PW-3, who duly supported the case of the respondent/plaintiff on all material aspects.

7. The appellant / defendant on the other hand, in order to rebut the claim of the respondent/plaintiff, stepped into the witness box as DW-1 and tendered his duly sworn affidavit as Ex.DW/1, reiterating the entire facts as mentioned in the written statement. Learned trial court on the basis of the revenue evidence i.e. Ex.P-1 to Ex.P-4, as per which the respondent/plaintiff, Buta Singh, was shown to be in cultivating possession of the suit land, which was in the ownership of the Central Government and at no stage the said record reflected either the name of the father of the parties or of the defendant or of his ever being in possession of the suit land nor in view of the appellant/defendant having led any evidence to discard the documentary evidence led by the respondent/plaintiff, held that the bald assertion of the appellant/defendant that an oral partition had taken place, carried no weight in the light of the revenue record placed on record by the respondent/plaintiff showing him to be in cultivating possession of the suit land. The argument that the respondent/plaintiff had filed the suit to grab the property of the Central Government, also found no weight with the learned trial Court on the ground that the respondent/plaintiff had himself clearly mentioned in the plaint that the property in question belonged to the Central Government and that he had only filed the suit to protect his claim against the appellant/defendant and that the respondent/plaintiff had been successful in establishing that he was in cultivating possession of the suit land. Accordingly, the learned trial

Court decreed the suit in favour of the respondent/plaintiff.

8. Appeal filed by the appellant/defendant was dismissed by the learned Appellate Court by relying upon the decision of Hon'ble the Delhi High Court in Kuldeep Singh Hooda vs. Shri Narender Mehlawat and others 2012 (2) Civil Court Cases 248, that relief of injunction could not be granted to plaintiff who was in unlawful possession against a true and lawful owner as also the decision of Hon'ble the Supreme Court in Partaprai N. Kothari vs. John Braganza 1999 (3) RCR (Civil) 119, that a person who has been in long continuous possession, can protect the same by seeking an injunction against any person in the world other than the true owner. Learned Appellate Court held that the appellant/defendant was not the true owner/title holder of the suit land and even though the respondent/plaintiff was also not the owner of the suit property, which vested in the Central/Provincial Government, but the respondent / plaintiff being in possession, the appellant/defendant could not interfere in his possession and dispossess him from the suit land illegally and forcibly. Learned Appellate Court also took into account the additional evidence led by the appellant/defendant, as per which, the Assistant Collector Second Grade, Guruharsahai, had found the defendant/appellant to be in possession over land bearing Rect. No.10, Killa No.26 min (0-10), but observed that a stay had been granted by the Civil Court regarding aforesaid land and the girdwari could not be corrected in the name of the appellant/defendant. On the contrary, the respondent/plaintiff on being granted permission, led evidence in rebuttal by way of copy of jamabandi for the year 1992-1993 (Ex.PA/1), 1997-1998 (Ex.PA/2), 2002-2003 (Ex.PA/3), 2007-2008 (Ex.PA/4), 2012-2013 (Ex.PA/5), khasragirdwaris Ex.PA/6 to Ex.PA/9, all showing the respondent/plaintiff to be in possession of the suit land as '*gairmarusi*'.

9. Learned counsel for the appellant has not referred to any evidence whatsoever to show that the appellant/defendant was either the owner or had a better title to the suit land.

10. In the light of the position noted above especially of the respondent/plaintiff having established to be in possession of the suit land though belonging to the Central Government, it was always open for him to seek protection of his possession against the appellant/defendant i.e. a person other than the true owner. Accordingly, no question of law much less substantial question of law arises for consideration in this appeal.

11. Accordingly, finding no merit in the instant regular Second Appeal, the same is dismissed.

(B.S. Walia)
Judge

21.02.2023
rajesh

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No