

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

RSA-4757-2016(O&M)

Date of decision:-31.1.2023

Raghubir Singh and others

...Appellants

Versus

Sukhwinder Singh and another

...Respondents

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

Present: Mr.S.K. Aneja, Advocate  
for the appellants.

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**H.S. MADAAN, J.**

1. Briefly stated, facts of the case are that plaintiffs Sukhwinder Singh and Bhupinder Singh both sons of Gurnek Singh, residents of village Chak Khere Wala, Tehsil Jalalabad West, District Fazilka had brought a suit against defendants Raghubir Singh, Karam Singh and Jasvir Singh, all sons of Ranjit Singh, residents of that very village, seeking a decree for permanent injunction restraining the defendants from interfering into peaceful possession of the plaintiffs over land measuring 12 kanals 4 marlas owned by the plaintiffs, defendants and other co-sharers but possessed by the plaintiffs only situated at village Pali Wala, Tehsil Jalalabad West, District Fazilka.

2. According to the plaintiffs, they have been in exclusive possession of the suit land since the year 1996-97; however the defendants

threatened to interfere in such possession of the plaintiffs, giving rise to a cause of action to the plaintiffs to bring the suit in question.

3. On notice, the defendants appeared and filed a written statement contesting the suit raising various legal objections contending that the plaintiffs have neither remained nor at present are in possession of the suit land and the suit in question is a counter blast to the application for correct of khasra girdawari of the suit land filed by the defendants, which was pending before Assistant Collector IInd Grade, Jalalabad; as a matter of fact the plaintiffs had sold the suit land comprising in Rectangle No.9, Killa Nos.10/2(3-7), 20(8-0) to Manjit Singh and Gurjeet Singh sons of Mehar Singh vide a registered sale deed dated 9.11.2005 putting the vendees into actual physical possession of the land; Manjit Singh and Gurjeet Singh in turn had sold that land in favour of the defendants vide registered sale deed dated 4.5.2011 putting the latter into possession, as such the defendants are in actual physical possession of the land in question, cultivating the same with which the plaintiffs have no concern and they have filed the suit to harass the defendants and to cause them monetary loss, therefore the suit deserves to be dismissed.

4. The plaintiffs had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the plaintiffs are in exclusive cultivating possession of the suit land as co-sharers? OPP.

2. Whether the plaintiffs' suit in the present form is not maintainable?

OPD.

3. Whether the plaintiffs have got no locus standi and cause of action to institute the present suit? OPD.

4. Relief.

6. The parties were afforded opportunities to lead evidence in support of their respective claims.

7. After hearing the learned counsel for the parties, the trial Court of Additional Civil Judge(Sr.Divn.), Jalalabad (West) vide judgment and decree dated 5.8.2015 decreed the suit of the plaintiffs restraining the defendants from interfering into peaceful physical cultivating possession of the plaintiffs over the suit land and from dispossessing them therefrom illegally, forcibly and without recourse to law.

8. Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Fazilka, which was assigned to Additional District Judge, Fazilka, who vide judgment and decree dated 11.4.2016 dismissed the appeal upholding the judgment and decree passed by the trial Court.

9. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court.

10. Notice of the appeal was given to respondents/plaintiffs, who have not put in appearance as such proceeded against ex-parte vide order dated 9.11.2022.

11. I have heard learned counsel for the appellants besides going through the record.

12. It was a case of disputed possession inasmuch as both the parties claimed themselves to be in possession of the suit land at the spot but the trial Court in para No.16 of its judgment has observed that the counsel appearing on behalf of the defendants during the course of arguments did not fairly dispute the possession of the plaintiffs over the suit land comprised in Rectangle No.9, killa Nos.2/2(0-8), 2/3(0-9) and the parties are at variance only with regard to plaintiffs alleged possession over the suit land comprised in Rectangle No.9, Killa Nos.10/2(3-7), 20(8-0). According to the plaintiffs they are in cultivating possession of that land, whereas according to the defendants, plaintiffs had sold the said land and are not left with any right, title or interest therein. Further, in para No.22 of the judgment referring to cross-examination of Raghubir Singh – defendant No.1, who had got his statement recorded as DW3, it is observed that inter alia he had stated that plaintiffs never put Manjeet Singh and Gurjeet Singh into possession of the land sold by them to the latter on account of some dispute with regard to consideration amount, therefore, khasra girdawari of the said land continued to be recorded in the names of vendors – plaintiffs. The trial Court has observed that such admission by the defendant No.1 lends credence to plaintiffs version that they never surrendered the possession of the land sold by them to vendees Manjeet Singh and Gurjeet Singh. It is further observed that if Manjeet Singh and Gurjeet Singh themselves never came into possession of the suit land, then the question of their putting the vendees – defendants into

cultivating possession of the same does not arise. The trial Court has observed that in the recitals of the sale deeds Ex.D3 – Ex.D5 with regard to delivery of possession, such recitals are not sufficient to hold the vendees to be in possession of the subject land without there being any clinching evidence available on the record.

13. In para No.30 of the judgment, the trial Court has observed that plaintiffs having been owners of the suit land comprised in Rectangle No.9, killa Nos.10/2(3-7), 20(8-0) at one point of time, they are entitled to protect their possession over it until evicted therefrom in due course of law.

14. Now coming to the judgment and decree passed by the First Appellate Court of Additional District Judge, Fazilka, the stand taken by the defendants that on the basis of sale deed dated 4.5.2011 executed by Manjeet Singh, Gurjeet Singh in their favour and possession of the land was also transferred was not believed. Therefore, the judgment and decree passed by the trial Court was affirmed by the First Appellate Court vide judgment and decree dated 11.4.2016.

15. With such concurrent findings being here, which I do not see any reason to differ with, the appellants/defendants do not have any case. Since the Courts below have found the plaintiffs to be in possession of the suit land, the defendants though claiming themselves to be owners of the same can get the possession in due process of law and not illegally and forcibly. They were rightly restrained by the Courts below in interfering in possession of the plaintiffs over the suit land in an illegal and forcible manner and from dispossessing the plaintiffs therefrom. No fault can be

found with the judgments passed by the Courts below. The appellants may initiate independent proceedings, if so advised for seeking possession of the suit land by adopting legal means and they cannot be permitted to take law into their hands and to get the possession of the suit land from the plaintiffs by using threat or coercion in an illegal and forcible manner.

16. The judgments and decrees passed by the Courts below are quite detailed well reasoned, based on proper appraisal of evidence and correct interpretation of law, which do not call for any interference.

17. No substantial question of law arises in this appeal.

18. Finding no merit in the appeal, the same stands dismissed.

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

31.1.2023  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**