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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**RSA-5090-2014 (O&M)****Date of decision: March 22, 2023**

Kiran Bala and another

....Appellants

versus

Ved Parkash

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. R.P.S. Ahluwalia, Advocate for appellants.

Mr. Arvinder Arora, Advocate for respondent.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellants/ defendant are in second appeal before this Court assailing learned trial Court judgment and decree dated 12.01.2012, as upheld by learned First Appellate Court vide its judgment and decree dated 05.05.2014, decreeing the suit of plaintiff-respondent for permanent injunction for restraining appellant-defendants from interfering in peaceful possession of plaintiff.

3. Briefly stated, facts, as noticed by learned Courts, are as below:

3.1 Land bearing khewat/ Khatauni No.146/164, Khasra No.10//6/7/1 measuring 3 Kanals was agricultural land and land comprised in Khewat/ Khatauni No.214/245, Khasra Nos.45, 129/2 measuring 5 Marlas was Gair Mumkin Bara (for tethering cattle and other uses) under the tenancy of Sh. Rama Nand, grandfather of plaintiff, as per revenue record. After the death of Rama Nand, plaintiff being his grandson stepped into possession of above mentioned suit land and has been in possession of the property in dispute since 1986. Appellant/defendant No.1 alleged to have purchased suit land on the basis of

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doubtful General Power of Attorney from its original owners without any notice to plaintiff-respondent, who was tenant over the property. Defendants started interfering into peaceful possession of plaintiff over suit land and threatened to dispossess him forcibly and illegally without any legal right.

4. Upon notice, appellant-defendants contested the suit raising preliminary objections *qua* Court fee; concealment of true and material facts.

4.1. On merits, it was averred that land bearing Khasra No.10//6/7/1, measuring 3 Kanals was agricultural land and land bearing khasra Nos.45, measuring 5 Marlas was Gair Mumkin land. Possession of respondent-plaintiff over land bearing Khasra No.10//6/7/1 measuring 3 Kanals was admitted. It was further averred that defendant is not tenant over land bearing Khasra Nos.45 & 129/2 measuring 5 Marlas. It was averred that land was Gair Mumkin land for the last more than 20 years. Grandfather of respondent-plaintiff had given possession of the land bearing Khasra Nos.45 and 129/2 to the owners of land i.e. Sham Sunder and others. Owners did not cultivate the same and kept it vacant. No crop was sown on this land. Appellant No.1 had purchased the same land bearing Khasra Nos.10/6/7/1, 45 and 129/2 vide sale deed dated 29.5.2003. After purchase of the same, appellant No.1 raised level of land by putting earth and raised construction over the property. The other allegations were also denied.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether the plaintiff is owner in possession of the disputed property as tenant? OPD*
2. *If first issue is proved, whether the plaintiff is entitled for injunction as prayed for? OPD.*
3. *Whether the plaintiff has not come to the court with clean hands, if so its effect? OPD*
4. *Whether plaintiff is entitled for special costs under section 35 CPC? OPD.*
5. *Relief.”*

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6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1 to 4 in favour of respondent-plaintiff. Consequently, learned trial Court decreed the suit of plaintiff-respondent to the effect that plaintiff being tenant is entitled to the protection of his right and defendants are restrained from dispossessing him except in due course of law, vide judgment and decree dated 12.01.2012.

8. Feeling aggrieved against the said judgment and decree dated 12.01.2012, appellant-defendants preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“12) The plaintiff Ved Parkash had filed a suit for permanent injunction claiming to be in possession over the Bara mentioned in the plaint and defendants trying to interfere in his possession. The defendants stated that the land measuring 5 Marla in Khasra No.45 and 129/2 was earlier an agricultural land and the grandfather of the plaintiff had given the possession of the same to the original owners Sham Sunder and others and now the plaintiff has no right over the suit property.

13) A perusal of the revenue record placed on file does not support the defendants in the present case as the possession over the land in Khasra No. 10//6/7/1 is also shown in the name of plaintiff Ved Parkash and similarly Jamabandi on file show the possession of Ved Parkash over land in khasra No.45 and 129/2, total measuring 5 Marla. The Jamabandies on file have presumption of truth, which is however, rebuttable but from the oral evidence, the defendants failed to rebut the same.

On the other hand, defendants admit the earlier possession of grandfather of plaintiff over this property by saying that the grandfather of plaintiff handed over back the possession to the original owners, but failed to prove this plea. This suggestion was also put to the plaintiff in the witness box, which he had denied and it was an admission of the possession of the grandfather of the plaintiff over the property. For seeking relief of injunction the plaintiff was

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only required to show his legal possession over the property and his plea has been supported by the revenue record, and this evidence was correctly appreciated by the learned lower court. There is no document to show the disturbance of possession of the plaintiff at any stage and as a result the learned lower court correctly appreciated the evidence on file and come to the right conclusion and no illegally, impropriety or incorrectness is found in the judgment so passed and the findings of the learned lower court on all the issues are affirmed. Resultantly, no merit is found in the present appeal filed and the same stands dismissed. Decree sheet be prepared accordingly.”

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

12. Having perused the impugned judgments, my considered opinion is that the same submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

12.1 No new arguments have been raised other than reiteration of the stand taken before the courts below.

13. Along with the appeal, appellants have also preferred CM-10730-C-2015 under Order 41 Rule 27 CPC for permission to lead additional evidence.

13.1. Learned counsel for applicant/appellants submits that after the decision of learned Courts below, they have received information under the RTI Act vide letter dated 09.06.2014 (Annexure A-1), which shows that entry of name of respondent/plaintiff was made by Halqa Patwari without there being any order from competent authority. He further contends that it is thus clear that the entries

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in revenue record in the name of respondent/plaintiff are not valid entries and cannot be relied upon.

13.2. No grounds are made out to allow the application for leading additional evidence at this belated stage. Even otherwise, learned First Appellate Court after appreciating material facts on record has returned the finding that the Jamabandies on file have presumption of truth, which is however, rebuttable but from the oral evidence, the defendants failed to rebut the same. Appellants cannot be allowed to adduce new evidence to fill up the lacunae by adducing additional evidence, at this stage.

14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

15. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

16. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

17. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17.1 Needless to say that decreeing suit of respondent-plaintiff in his favour *qua* possession shall not be construed as any hindrance in the right of appellant-defendants to claim possession on the basis of title which they assert through sale-deed, subject of-course to the same being proved in due course of law.

17.2 Having perused case file, it is borne out that neither any documentary evidence was produced before learned trial Court in support of defence taken in

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written statement *qua* possession being with appellant-defendants nor even a remote attempt being made either to seek a report from the Kanungo of the area or appointment of Local Commissioner *qua* physical possession.

17.3 In the premise, I find nothing wrong with learned trial Court in disbelieving the defendants because even though in the written statement, it was stated that they were put in possession by their vendor who in turn is stated to have got possession from forefathers of plaintiff but the defendants have failed to establish that their vendor, at the relevant time, was in possession of land in question. There was thus no question of the latter giving its possession to the defendants. The Courts below were fully justified in protecting possession of plaintiff.

18. Pending application(s), if any, shall also stand disposed of.

19. No order as to costs.

(ARUN MONGA)
JUDGE

March 22, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No