

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

110

RSA-2077 of 2018(O&M)
Date of Decision: 20.10.2023

Ram Singh

....Appellant

Versus

Bore Singh

....Respondent

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. V.K. Sandhir, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the plaintiff-Ram Singh against the concurrent findings of decreetal of the counter claim filed by the defendant in regard to a particular piece of land falling in Khasra No.47//25/2(4-4).

2. Plaintiff filed a civil suit for permanent injunction against defendant stating therein that he is owner in possession of the property measuring 52 Kanals 5 Marlas, bearing Khewat No.501/491, Khatauni No.1047, Khasra No.47//2/1 (1-19), 22/2 (5-3), 23 (7-2), 25/1(2-11), 72//2/1 (2-0), 2/2(6-0), 3(8-0), 7 Min (2-17), 8(8-0), 9(8-0), 13/1(0-13) and of land measuring 7 Kanals 16 Marlas bearing Khewat No.406/399 Khatauni No.832 Khasra No.74//14 min (7-16) (in previous Jamabandi it was mentioned as 72/14 min (7-16) situated at village Tolawal, Tehsil Sunam, as per Jamabandi for the year 2008-09.

3. On the other hand, defendant filed his written statement by stating that he has no concern with the land detailed in the plaint, however, under the garb of seeking permanent injunction of the land

possessed by the plaintiff, he wants to take possession over Khasra No.47//25/2(4-4) forcibly, which infact is owned and possessed by the defendant-Bore Singh. Learned trial Court in its impugned judgment dated 23.08.2016, recorded a categoric finding in paragraph No.8 that as per Jamabandi Ex.P1 and Ex.P2 and Khasra Girdawari Ex.P5 to Ex.P8, plaintiff is shown to be owner in possession of the suit property detailed by him in the plaint and defendant is neither the co-sharer with the plaintiff, nor in possession of the suit property.

4. Learned trial Court has also specifically observed that defendant himself has admitted in his cross-examination, while appearing as DW-1, that he has no concern or connection with the suit property detailed in the plaint.

5. In these circumstances, the civil suit filed by the plaintiff for the land detailed in the plaint was decreed, however, learned trial Court also found that the counter claimant/defendant is owner in possession of Khasra No.47//25/2 (4-4) as per Jamabandi for the year 2013-14 and plaintiff is neither the co-sharer in Khasra No.47//25/2 (4-4) with the counter claimant, nor shown anywhere to be in possession of it. Thus, by holding that the presumption of truth is attached in the entries of the Jamabandi and same has not been rebutted by the plaintiff, counter claim qua the land bearing Khasra No.47//25/2(4-4) was decreed in favour of the defendant. For the sake of convenience, relevant findings recorded by learned trial Court in paragraph No.8 of the judgment is as under:

'8. In the present case the plaintiff has sought the relief of permanent injunction against the defendant qua the suit property mentioned in the head note of the plaint and similarly, the defendant has sought the relief of permanent injunction, through the counter claim against the plaintiff qua the property mentioned in the counter claim. The Jamabandi ExP1 and ExP2 and Khasra Girdawris ExP5 to Ex. PS show that the plaintiff is owner and in possession of the suit property. The defendant neither the co-sharer in the suit property with the plaintiff nor he is anywhere in the possession of it. The presumption of truth is attached in the entries of the Jamabandis. Though, such presumption is rebuttable but the defendant could not rebut it through his evidence. Rather the defendant (DW-1), has himself admitted in his cross examination that he has no concern of connection with the (suit) property of the plaintiff. The Jamabandi Ex. D1 relief upon by defendant, also shows that the property of the defendant is different from the suit property. Therefore, from the oral as well as documentary evidence it is established that plaintiff is owner and in possession of suit property. Accordingly, the issue no. 1 is decided in favour of the plaintiff and against the defendant. Similarly, the Jamabandi for the year 2013-14 Ex. D1 shows that the counter claimant (defendant) is owner and in possession of Khasra no. 47//25/2 (4-4). The respondent (plaintiff) is neither the co-sharer in the said Khasra with the counter claimant (defendant) nor he is anywhere in the possession of it. The presumption of truth is attached to the entries of the Jamabandis. Though, such presumption is rebuttable but the respondent (plaintiff) could not rebut it through his evidence. Rather the respondent (PW-1) has himself admitted in his cross examination that the counter claimant (defendant) is owner and in possession of Khasra No47//25/2 (4-4). The Jamabandis ExP1 and E. P2 relief upon by respondent (plaintiff) also show that the property of the respondent (plaintiff) is different from the property of the counter claimant (defendant). Therefore, from the oral as well as documentary evidence it is established that the counter claimant (defendant) is owner and in possession of Khasra no. 47//25/2 (4-4). Accordingly, the issue no. 2 is decided in favour of the counter claimant (defendant) and against the respondent (plaintiff).'

6. The plaintiff filed his first appeal before the First Appellate Court, which was dismissed vide judgment dated 31.05.2017. Thereafter, plaintiff preferred the present regular second appeal before this Court against the concurrent findings recorded qua the decreetal of counter claim in favour of the defendant. However, plaintiff has not been able to controvert the findings recorded by the learned Courts below. From perusal of the record of the appeal, it appears that there was neither any claim in the suit qua the land claimed to be in ownership and possession of the defendant, nor any purpose, whatsoever, has been explained by the appellant-Ram Singh for preferring the present regular second appeal before this Court.

7. This Court has gone through the findings recorded by learned Courts below and there is nothing substantive pointed out to reach to the conclusion that the findings recorded by the Courts below are incorrect or not sustainable in any manner. No question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands dismissed.

October 20, 2023

rashmi

Whether speaking/reasoned

Whether reportable?

[SANJAY VASHISTH]
JUDGE

yes/no

yes/no