

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

108

RSA No.3802 of 2018

Date of Decision: 30.10.2023

Dharam Chand

.....Appellant

Versus

Ganpat and Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Gulshan Nandwani, Advocate
for the appellant.

SANJAY VASHISTH, J (ORAL)

1. The present Regular Second Appeal has been filed by the plaintiff against the concurrent findings of dismissal of suit.
2. The suit was filed by the plaintiff seeking decree for permanent injunction on the ground that earlier Om Parkash, Ram Kishore and Satbir sons of Mulia were in cultivating possession over the land in question as Bhondedarans and for seeking protection of their possession, one suit seeking permanent injunction was filed by them, which was withdrawn on account of an agreement dated 01.08.2005. It is further pleaded case of the plaintiff that on the basis of writing dated 01.08.2005, bhondedarans relinquished their possessory rights of the property in favour of the plaintiffs and therefore, in the year 2008 present suit for injunction was instituted.
3. There is a categoric findings by both the Courts that land measuring 70 kanal 2 marla is in joint possession of its owners.

While dismissing the suit another finding given by the Court is that the document dated 01.08.2005 (Ex. PW11/2) has not been proved, by virtue of which plaintiff obtained possession over the land. Anil Kumar PW4 deposed that the said agreement was scribed in Bawal and was got attested at Rewari.

Another witness, namely, Ganeshi Lal (PW5) deposed that said agreement was scribed in the Court at Rewari. In paragraph No.15, learned Lower Appellate Court also noticed the earlier order dated 27.08.2008 passed by the Court of learned Additional Civil Judge (Sr. Divn.), Rewari, wherein it was concluded that Dharam Chand is co-sharer to the extent of 1/252 share i.e. to the extent of 5 marlas in the entire land measuring 70 kanal 2 marlas, whereas, plaintiff-Dharam Chand is claiming his possession over the entire piece of land measuring 70 kanal 2 marlas. Thus, his possession over land measuring 69 kanal 17 marlas is held to be unauthorized and also he is held liable to pay the use and occupation charges to the other co-sharers. Therefore, Courts below have held that plaintiff failed to prove his rights over the entire land measuring 70 kanal 2 marlas in any capacity. Therefore, it cannot be held that plaintiff is in exclusive possession of the entire suit land.

4. Once it is held that majority of the share is held by other co-sharers, without there being any evidence regarding the exclusive possession of the plaintiff, decree of injunction against the other co-sharers cannot be granted.

5. In the absence of any evidence regarding exclusive possession, suit has been dismissed by both the Courts below. Even before this Court

also, nothing much has been projected, so that, already recorded findings could be called unsustainable.

6 Taking into consideration the findings recorded by the learned Courts below, I am of the considered view that there is no substance with this Court to cause interference for the purpose of taking a different view to the judgments passed by the learned Courts below.

7 Even, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

8 Thus, the instant appeal being devoid of merits, stands dismissed. The judgment(s) & decree passed by both the Courts below are hereby affirmed.

9 Since the appeal has been dismissed on merits, no separate order in the delay application is required to be passed.

(SANJAY VASHISTH)
JUDGE

30.10.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No