

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

(109)

**RSA-5985-2017 (O&M)
Date of Decision: 17.08.2023**

Gopal Singh and others

.....Appellants

Versus

Gurbachan Singh deceased through his LRs and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. H.P.S.Ishar, Advocate, for the appellants.

HARKESH MANUJA, J.(ORAL)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 02.02.2012 and 03.12.2015 passed by the Courts below, whereby, a suit for permanent injunction filed at the instance of appellants/plaintiffs has been dismissed.

2. Briefly stating, appellants filed a suit for permanent injunction for restraining the respondents/defendants from interfering in their peaceful possession over the suit property. It was pleaded that the suit land was previously owned and possessed by one Dalbir Singh who sold the same to the appellants vide sale deed dated 02.08.2006 followed by mutations entered on 12.01.2007, however, in the column of possession, the entries were recorded in the name of Munsha Singh and Hakam Singh i.e. predecessor-in-interest of the respondents/defendants and based thereupon, they were trying to interfere in the possession of the appellants/plaintiffs, resulting into filing of the suit.

3. Upon notice, respondents/defendants appeared and filed written statement while submitting that a suit for pre-emption qua the property in question was decreed in favour of respondents/defendants vide judgment and decree dated 25.10.2005 which was upheld by the first appellate Court on 21.02.2006 and even Regular Second Appeal No.1568 of 2006 filed against

the same was dismissed by this Court on 03.07.2009 and thus, the aforementioned Dabir Singh was left with no right, title or interest in the suit property and accordingly, could not have alienated the same in favour of appellant/plaintiff.

4. The trial Court vide its judgments and decrees dated 02.02.2012 dismissed the suit filed by the appellants/plaintiffs. Aggrieved thereof, the appeal was filed which also came to be dismissed vide judgment dated 03.12.2015.

5. Impugning the aforementioned judgments and decrees, the learned counsel for the appellants submits that the entire emphasis has laid by the Courts below upon the judgment and decree dated 25.10.2005 whereby, decree of pre-emption was passed in favour of respondents/defendants, upheld by this Court vide judgment dated 03.07.2009, however, only photostat copies of those were placed on record and thus were never proved and therefore, would not have been relied upon. Besides it, learned counsel also submits that in the litigation pertaining to arising the aforementioned judgments, the appellants/plaintiffs were not even party and thus, the same could not have been relied upon against them. He further submits that respondents/defendants never appeared in support of their defence pleaded in the written statement and thus, adverse inference was required to be drawn against them. No other argument has been addressed.

6. I have heard learned counsel for the appellants and gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellants.

7. First come first, being the plaintiffs the burden of proof was upon the appellants to prove their possession over the suit property in dispute in a

suit for permanent injunction filed at their instance. On the contrary, in the present case, both the Courts concurrently found that in the revenue document (Jamabandi Ex.P-3 for the year 2004-05), it was the respondents/defendants who was recorded to be in possession of the suit property and nothing substantial was brought on record to rebut the presumption of truth attached to the entries made in the revenue record in the shape of jamabandi in terms of Section 44 of the Punjab Land Revenue Act, 1940, as regards possession of the respondents/defendants.

8. Moreover from the judgments and decrees passed in the pre-emption suit, the respondents-defendants were held to be having right of pre-emption over the suit land being tenants, though only photocopy of those were placed on records as Mark documents, however, the same having been pleaded in the written statement and not been controverted were rightly considered by the Courts below to further the cause of respondents-defendants.

8. In view of the discussion made hereinabove, finding no illegality or perversity in the judgments passed by the Courts below, the present appeal being devoid of merits is hereby dismissed.

(HARKESH MANUJA)
JUDGE

17.08.2023
anil

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