

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

RSA-6171-2018 (O&M)

Date of Decision: October 31, 2023

JUJHAR SINGH & ORS

..... Appellants

Versus

BALWANT SINGH

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Jaideep Verma, Advocate for the appellants.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgment and decree dated 19.07.2018 passed by the First Appellate court whereby, suit for permanent injunction filed at the instance of appellants-defendants stands decreed.

2. Briefly stating, respondent-plaintiff filed a suit for permanent injunction claiming himself to be in possession of land bearing khasra No.19//4 (2-0) and 19//7 (8-0) situated within revenue estate of village Phassey, Tehsil Chamkaur Sahib, District Rupnagar. It was pleaded in the plaint that respondent-plaintiff was allotted land falling in Khasra No. 19//7 (8-0) by Tehsildar, Sales on 13.12.1991 and in pursuance thereof, he was handed over possession as well whereas, appellants-defendants were trying to interfere in his peaceful possession over the same thereby compelling him to file the suit.

3. In response the appellants-defendants contested the suit while filing a detailed written statement, disputing the factum of

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possession of the land in question in favour of respondent-plaintiff and claiming themselves to be in long settled possession of the same.

4. The trial Court vide judgment and decree dated 29.01.2018 dismissed the suit filed at the instance of respondent-plaintiff. Aggrieved thereof, First Appeal was filed, the same was allowed vide judgment and decree dated 19.07.2018 passed by the learned First Appellate Court.

5. Impugning the aforementioned judgment and decree passed by the First Appellate Court, learned counsel for the appellants-defendants submits that from the evidence available on record, the possession of respondent-plaintiff was never established. He also submits that even as per the own admission of respondent-plaintiff in cross-examination, the Central Government was recorded in column of possession of khasra girdawari and the same was corrected in the name of appellant after his death in 2015 whereas, the suit was instituted in the year 2012. No other argument has been addressed.

6. I have heard learned counsel for the appellants-defendants and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the appellants-defendants.

7. A perusal of jamabandi for the year 2007-08 which was proved on record as Ex.P-1(Annexure A-1, Page-47 of the present paper-book), the appellants-defendants have been recorded to be in possession of the property in question as gair marusi with Central Government as its owner. In addition, the respondent-plaintiff produced on record khasra girdawaris for the year 2016-17 (Ex.P-2) showing his

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possession over the suit land. No document to the contrary has been referred to, at the instance of appellants-defendants. A well-reasoned judgment has been recorded by the First Appellate Court, based on appreciation of the documentary evidence available on record so as to enter a finding in favour of respondent-plaintiff as regards his possession over the property in question thereby, restraining appellants-defendants from interfering with the same. Relevant portion from para 11 of the judgment passed by the First Appellate Court being relevant is reproduced hereunder:-

11. Now adverting to the second proposition on which basis the learned trial court has declined the relief to the plaintiff that he is in unauthorized possession of public property and therefore, is not entitled to relief of injunction. Here, again the learned trial court has committed error because the plaintiff has not claimed injunction against the Central Government, which is recorded owner in the column of possession. His claim is against the private persons. Moreover, he cannot be said to be in unauthorized possession of land measuring 8 Kanal bearing Khasra .19//7, because it is proved from allotment order Ex.PW3/B that such land was allotted to him by the government on the basis of his long possession. However, the learned trial court has ignored such allotment order on the ground that the plaintiff has failed to abide by the conditions of the sale because he did not make payment of balance sale consideration. Such view of the learned trial court to dislodge the plaintiff is also erroneous because such order of sale has not yet been set aside and moreover, it is for the government to claim balance sale consideration from the plaintiff. It is no business of the defendants to challenge such sale certificate because of non-payment of balance sale consideration. The government has not yet cancelled such allotment order and therefore, it cannot be said that the plaintiff is in unauthorized possession of such property. Possession of plaintiff has been duly recorded on both the khasra numbers as per Jamabandi Ex.P1 for the year 2007-08 and further his possession was extended as per Khasra/Girdawari entries for the year 2016-17.

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8. Moreover, present is simplicitor suit for permanent injunction wherein, the factum of possession was relevant, in the absence of any title having been set-up by respondent-plaintiff in his favour which still vests with the Central Government. In view thereof, the injunction granted in favour of respondent-plaintiff shall always be subject to adopting due course of law against him by the instance of owner/Central Government.

9. Accordingly, in view of the discussion made hereinabove, finding no illegality or perversity with the judgment and decree passed by the First Appellate Court, the present appeal is dismissed.

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

31.10.2023
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(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

