

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA No.672 of 2018
Date of Decision: 09.10.2023

Gursahib Singh

....Appellant

Versus

Bohar Singh and another

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashok Kumar Khunger, Advocate
for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the appellant/plaintiff against the concurrent findings of the dismissal of civil suit.

2. Plaintiff-Gursahib Singh, has filed a suit for permanent injunction against the defendants, who are related as uncle (Chacha) and father of the plaintiff respectively. In regard to the pleadings, defendants have specifically averred in the written statement that the suit filed by the plaintiff is not maintainable. Plaintiff is not even a co-sharer in the suit land and as per the entries in the revenue record

plaintiff is recorded as *cultivator in possession as Pissar* (son of defendant No.2).

3. After framing the issues and as per the record available before learned trial Court, it was found that both the defendants are real brothers and plaintiff is son of defendant No.2. As per the Jamabandi and Khasra Girdawari, relied upon by plaintiff, he is recorded in possession through his father as *Gursahib Singh Pissar Owner Baldev Singh*.

4. It has been held by the learned Courts below that the claim of the plaintiff in regard to the ownership of the suit land is baseless. Even, it is not explained that in what manner he attained the alleged ownership in the suit land. Moreover, in regard to the possession of the plaintiff there is a divergent stand taken by the plaintiff. At one point of time, plaintiff alleged that he received the possession of the property from one Jugraj Singh. However, at the same time, it is admitted by him that there is no document placed on the record by him regarding the ownership of Jugraj Singh qua the land in question. Thus, after examination of the pleadings and appreciation of the evidence available on record, both the learned Courts below found that there is no substance in any of the pleadings raised by the plaintiff.

For the sake of convenience, findings record in paragraph No.16 and 17 by learned First Appellate court is as under:

'16. Appellant is alleging that he has been shown to be in possession since the year 1993 and

that he has been illegally dispossessed on 04.03.2015 and as such, he is entitled for possession thereof. However this contention of the appellant is found to be without merit because in the first instance on the basis of which document the appellant came to be in possession in his individual capacity has not been mentioned by him. At one point of time, he was shown to be in possession through his father who obviously is joint owner with respondent no.1 Bohar Singh. Respondent no.1 accordingly filed an application for partition of his share before competent Court of jurisdiction and vide order dated 24.06.2014 (Ex.D5) that application was allowed and land between respondent no.1 and respondent no.2 i.e. father of the appellant was ordered to be partitioned. An appeal was preferred against order (Ex.D5) by the father of the appellant i.e. respondent no.2 and that also was dismissed on 09.04.2015. Accordingly, Sanad Takseem was prepared and warrant of possession (Ex.D8) were ordered to be issued and it is through lawful process that respondent no.1 got possession in terms of partition on 04.05.2015 vide (Ex.D13). Thus, it cannot be said that appellant has been dispossessed illegally or forcibly or on the basis of forged or fabricated document.

17. As already stated above, appellant was never owner and his possession was through his father and after partition, appellant is not entitled for possession or grant of permanent injunction as prayed for by him. Lawfully land was partitioned by the revenue authorities and the Civil Court otherwise has got no jurisdiction to entertain any question arising out of such proceedings.'

5. I have heard the counsel for the plaintiff and gone through the findings recorded by learned Courts below. Even, appellant/plaintiff failed to highlight any evidence available before this Court to substantiate his claim raised by way of pleadings in the plaint. 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 09, 2023

rashmi

Whether speaking/reasoned

Whether reportable?

[SANJAY VASHISTH]

JUDGE

yes/no

yes/no