

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.1197 of 2019 (O&M)

Date of Decision: 04.04.2024

Mohan Singh @ Mohni through LR & Another

... Appellants

Versus

Romesh Kumar and others

... Respondents

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Present:- Mr. Jagjit Singh, Advocate
for the appellants.

Mr. Sanjeev Duggal, Advocate
for respondent No.1-Caveator.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree as passed by learned Additional Civil Judge (Senior Division), Phagwara (for short 'the trial Court') on 06.02.2016, whereby the Civil Suit filed by the appellants-plaintiffs (here-in-after to be referred as 'the plaintiffs') against the respondents-defendants (here-in-after to be referred as 'the defendants') for seeking the decree for declaration to the effect that they (plaintiffs) were owners in possession of the suit land, with the further prayer for the relief of permanent injunction to restrain the defendants and their agents etc from dispossessing them (plaintiffs) from the said land or interfering in their peaceful possession over the same, has been dismissed and also by the judgment and decree, as handed down by learned Additional District Judge, Kapurthala (for short 'the Lower Appellate Court') on 25.09.2018 qua the dismissal of the appeal moved by them (plaintiffs) against the above-said

judgement and decree dated 06.02.2016, the plaintiffs have preferred the instant appeal to lay challenge to the same.

2. Shorn and short of unnecessary details, the facts, as emanating from the perusal of the file and resulting in the filing of the present appeal, are that the plaintiffs filed the afore-referred Civil Suit, while averring that Hari Singh had purchased the suit land from Bajrang Bali and later-on, he had exchanged the same with their (plaintiffs') land and they had, thereby, become the owners of the suit land and Mutations No.164 and 177 were also sanctioned in this regard but due to inadvertence, their names could not be got incorporated as such, in the relevant revenue record and the defendants were all out to dispossess them from the said land. It is pertinent to mention here that respondents-defendants No.3 to 5 had been proceeded against *ex-parte* by the trial Court whereas respondents-defendants No.1 & 2 filed their written-statement, contesting the claim of the plaintiffs therein on various grounds. Then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence as led by them on the record and hearing their respective counsel, the trial Court dismissed the Civil Suit and the appeal, moved by the plaintiffs against the judgment and decree rendered by the trial Court, has also ended in its dismissal, as already indicated in the opening para of this judgment.

3. I have heard learned counsel for the appellants-plaintiffs as well as learned counsel for the respondent/defendant No.1-Caveator in the instant appeal, at the preliminary stage and have perused the file carefully.

4. Learned counsel for the plaintiffs contends that the plaintiffs are in settled possession over the suit land as its owners, since the day of receiving the same from Hari Singh in exchange of their land with him but

the trial Court and the Lower Appellate Court have wrongly declined the relief, as prayed for by them in the Suit and in these circumstances, it becomes explicit that the impugned judgments and decrees, are not legally sustainable and therefore, the same deserve to be set-aside.

5. Per contra, learned counsel for the respondent-defendant No.1-Caveator argues that the proceedings regarding the partition of the suit land, were pending in the Competent Court and it being so, the plaintiffs did not have any cause of action to file the above-mentioned Civil Suit and hence, the present appeal be dismissed.

6. It goes undisputed between the parties that an application for seeking the partition of the land, including the suit land, had already been filed in the Competent Court and the same was pending adjudication, at the time of filing the Suit. Thus, the rights of the parties in the suit land were to be looked into, considered and decided in the afore-referred application, meaning thereby that the plaintiffs did not have any occasion or cause of action to file the Civil Suit or to pursue the instant appeal.

7. As a sequel to the fore-going discussion, it follows that the impugned judgments and decrees, as passed by both the Courts below, do not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the same are, hereby, upheld and the appeal in hand, being *sans* any merit, stands dismissed.

04.04.2024
pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*