

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2067 of 1988(O&M)

Date of Order:21.02.2024

Surjit Singh and others

.Appellants

Versus

Narinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Khunger, Advocate, for the appellants.
Mr. Abhinav Jain, Advocate, for respondent no.1.

ANIL KSHETARPAL, J

1. In this regular second appeal, the plaintiffs assail the correctness of the judgment and decree passed by the First Appellate Court which in turn has reversed the judgment and decree passed by the trial court.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. While filing the suit, the plaintiffs claim that they are entitled to possession being owner of land comprised in Rect. No.42, khasra no.8(8-0) on the basis of partition because previously the parties were co-sharers in the suit land and in the partition, the suit land fell to their share. Defendant no.3 is in unauthorized possession and therefore, the plaintiffs should be delivered possession of the suit property. Defendant no.1 and 2 did not contest the suit, whereas defendant no.3 claim that he is not a party to any partition proceedings and defendant no.1 and 2 were in possession and they exchanged the suit land with defendant no.3, approximately 12 to 13 years back. They also filed a suit on 22.10.1983, for grant of decree of declaration that they are owner in possession by virtue of exchange between them and

defendant no.1 and 2 and their father Sh. Milkha Singh which was decreed on 07.08.1985.

4. Though, the trial Court dismissed the suit, however, the First Appellate Court on re-appreciation of the evidence came to a conclusion that the exchange between defendant nos.1 and 2 on one hand and defendant no.3 on the other hand is proved. For this purpose, the Court relied upon the entries in the revenue record, wherein defendant no.3 is recorded to be in possession in lieu of exchange. The judgment Ex.D5 has also been proved.

5. Admittedly, defendant no.3 was not party to the private partition which was arrived at between the parties before the Assistant Collector Ist Grade. The courts also held that this partition will not affect the rights of defendant no.3.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. The learned counsel representing the appellants submits that there is no evidence to prove the exchange between defendant nos.1 and 2 on one hand and defendant no.3 on the other hand. He submits that the First Appellate Court has erred in reversing the judgment and decree passed by the trial court.

8. This court has considered the submissions of the learned counsel representing the parties.

9. The present suit was filed on 23.05.1985. In between defendant nos.1 and 2 and defendant no.3, there is a judgment and decree dated 07.08.1985, declaring that defendant no.3 is owner in possession of the suit land on account of exchange between them. The finding in the judgment is corroborated by the revenue record. In any case, the partition of the property

without impleading defendant no.3 is nonest in the eyes of law.

10. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.
11. Dismissed.
12. All the pending miscellaneous applications, if any, are also disposed of.

February 21, 2024

nt

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO