

RSA-1846-1989 (O&M)

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2024:PHHC:018191

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

RSA-1846-1989 (O&M)

Reserved on: 15.01.2024

Date of decision: 08.02.2024

Bishan Devi and others

....Appellants

Versus

Basti Ram and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Ajay Jain, Advocate for the appellants

Mr. Sanjay Mittal, Advocate for the respondents

ANIL KSHETARPAL, J

1. This is the plaintiff's second appeal to challenge the correctness of the judgment and decrees passed by both the courts below, while partly dismissing their suit for the grant of decree of declaration that are owners in possession of the suit land and are entitled to get the entries in the revenue record in the column of ownership corrected in their favour. It may be noted here that on 29.10.1989 the defendant's second appeal i.e. RSA 17674 of 1999 Basti Ram etc. vs. Bishan Devi etc. was dismissed.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. On 31.03.1955, in civil suit no.304 of 1954 (Kanhiya son of Gopal vs. Ganpat and others) Kanhiya was declared owner of the property and entitled to possession by the trial court again which the first appeal filed by Ganpat etc. was dismissed on 13.9.1956 whereas the

Regular Second Appeal was dismissed by the High Court on 14.01.1960. In LPA no.127 of 1960, the correctness of the judgment passed by the courts below was upheld vide judgment dated 24.09.1963. It is the case of the plaintiffs that pursuant to the aforesaid decree, the possession of the property was delivered to the plaintiffs on 17.10.1964 and mutation no.720 was entered in the revenue record, however, it was not attested. When the defendants started creating obstruction, the plaintiffs filed the present suit with a prayer to correct the revenue record. The suit was contested by the defendants on the ground that the possession of the land has never been delivered to the plaintiffs and now the same cannot be delivered because the prescribed period for execution of the decree has lapsed.

4. The trial court, while partly decreeing the suit, held that the plaintiffs are owners in possession of the suit land except the land falling in khasra no. 49, 15/2, 108, 166 and 403. They were also held entitled to get the revenue record corrected in their favour.

5. Both the parties filed separate appeals before the First Appellate Court, which were dismissed.

6. On 21.11.2014 the Regular Second Appeal was dismissed. However, in RA-RS-70-C-2014 the review application filed by the plaintiffs was allowed after the court found that inadvertently defendant's appeal has been dismissed, whereas this appeal was filed by the plaintiffs. Now, the appeal has come up for final disposal.

7. Learned counsel representing the appellants (plaintiffs) contends that the plaintiffs have not sought the relief of possession

because they are already in possession of the property pursuant to delivery of possession in execution of the judgment and decree passed on 31.03.1955. In substance, the plaintiffs are only praying for issuance of direction to carry out necessary corrections in the revenue record in terms of judgment and decree passed by the court. He submits that the plaintiffs or their predecessor have been continuously litigating in the courts for the last 70 years and despite specific judgment and decree passed in their favour, the revenue authorities have wrongly refused to correct the revenue record.

8. On the other hand, the learned counsel representing the respondents submits that as per revenue record, the plaintiffs are not in possession of land comprised in khasra no.108, 166 and 403 and Rect. No.49 khasra no.15/2. He submits that on appreciation of evidence, the courts have passed the decree, which should not be disturbed.

9. This Court has considered the submissions made by the learned counsel representing the parties and perused the scanned copy of the record of the courts below. It is evident that pursuant to the final judgment passed by the Division Bench in Letter Patent Appeal no. 127 of 1960, the possession of the entire suit property was delivered to the Kanhiya and his children (predecessor-in-interest of the plaintiffs) vide Rapat no.60 dated 17.10.1960 with respect to three parcels of land namely, 100 kanal 10 marlas, 18 kanal 9 marla and 5 kanals 7 marlas. This delivery of possession is corroborated by the report of Field Kanungo, Ex.PW/A, communication Ex.P10 and report of Chowkidar Ex.P9.

10. Furthermore, it is also evident that mutation no.720 Ex.P8 in compliance with the judgments passed by the courts in the previous proceedings was entered, however, unfortunately, it was not attested, resulting in error in the revenue record. The plaintiffs have only prayed for the correction of the revenue record in terms of the judgments and decree passed by the court in Civil Suit no.304 of 18.09.1954, which was decreed on 31.03.1955.

11. In this case, the trial court has erred in observing that the plaintiffs have failed to prove that they ever took the possession of the land comprised in khasra no.108, 166 and 403 and Rect.no.49 Killa no.15/2. It may be mentioned here that vide report dated 17.10.1964, the possession of the entire land was delivered to the predecessors of the plaintiffs. On a careful study of the judgement passed in 1955, it is evident that Sh. Ganpat, the predecessor-in-interest of the defendants, was claiming to be adopted son of Smt.Rambai widow of Sh.Delu, however, the same was not accepted by the courts. There is no occasion for the courts below to hold the possession of the land comprised in khasra no.49/15/2, 108, 166 and 403 and Rectangle no.49, Killa no.15/2 was not delivered to the plaintiffs. From the combined reading of the various reports Ex.P-10 and Ex.PW2/A, it is evident that possession of land comprised in Rect. no.49 killa no. 15/2 and khasra no.108, 161, 403 was specifically delivered to the plaintiffs in the year 1984.

12. Keeping in view the aforesaid facts and discussion, the appeal is allowed and judgment and decrees passed by both the courts below are modified. The suit filed by the plaintiffs shall stand

completely decreed and a direction is issued to the revenue authorities to incorporate the name of the plaintiffs (appellants herein) in the revenue record in the ownership column as well as in the possession column.

13. All the pending miscellaneous applications, if any, are also disposed of.

08.02.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE