

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

RSA-592-1989
Date of decision: 01.03.2024

DURJAN SINGH (DECEASED) THROUGH LRS. ..Petitioner

Versus

SANDEEP KUMAR AND ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Sharma, Advocate
for the appellant.

Ms. Narender Kaur, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. This is the plaintiffs appeal against the judgment and decree passed by the First Appellate Court that 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. The plaintiffs filed a suit for possession of land measuring 6 kanal and 7 marlas, comprised in Rectangle No.14, Khasra No.7/2, on the ground that the aforesaid property is their ancestral property and the mother of defendant No.2 namely Smt. Harbans Kaur in collusion with the revenue officials got her name included in the cultivation column and entered into a forcible possession of the property. After her death, her son namely Sh. Bishan Singh continued in possession. Sh. Sandeep Kumar-defendant No.1 is son of Sh. Bishan Singh. It was claimed that the defendants had taken over possession in the year 1983. The defendants while contesting the suit

claimed that they are in continuous possession of the property as owners without payment of any rent or any amount for a period of more than 12 years and therefore, they have perfected their title by way of adverse possession. The allegations with regard to Smt. Harbans Kaur getting entry in the revenue record in collusion with the patwari were disputed.

4. The trial Court on appreciation of evidence decreed the suit while returning a finding that the defendants have failed to prove that they had perfected their title by way of adverse possession. The defendants filed the first appeal. The First Appellate Court on re-appreciation of evidence affirmed the findings of fact arrived at by the trial Court to the effect that the defendants have failed to prove their ownership by way of adverse possession, however, the First Appellate Court accepted the appeal on the ground that the plaintiffs failed to prove the instrument of partition to prove that the aforesaid land was allotted to them and plaintiffs have failed to prove that they are owners in possession of the suit land. Challenging the correctness of the judgment passed by the First Appellate Court, this regular second appeal has been filed.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned copy of the requisitioned record.

6. On the one hand, the learned counsel representing the appellant submits that even if the plaintiffs have failed to prove partition of the property by producing the instrument of partition, still, it is evident that the plaintiffs are the co-owners of the property. He submits that perusal of the jamabandi (Ex.D-1) for the year 1980-81, proves that the plaintiffs were in

possession of the property as owners. He submits that the defendants have failed to prove their right, title or interest in the property and therefore, they cannot be permitted to continue in possession.

7. On the other hand, the learned counsel representing the defendants while referring to copies of '*khasra girdawaris*', submits that the defendants possession is recorded from March, 1967 onwards and except a brief period between October, 1982 to March, 1983. Hence, she prays for dismissal of the appeal.

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

9. It is evident that the defendants (respondents herein) are trying to protect their possession on the plea that they have become owners by 'efflux of period' by way of adverse possession. Both the Courts have found that the defendants have failed to prove the same.

10. Even, if the plaintiffs failed to produce the instrument of partition to prove that they were allotted this land in the partition proceedings, still they are one of the co-owners. A co-owner is entitled to file a suit for possession on behalf of the entire body of co-owners against the unauthorized occupants. Moreover, Ex.D-1, copy of jamabandi for the year 1980-81, proves that the suit land was exclusively owned by the plaintiffs.

11. The entry in favour of the defendants in '*khasra girdawaris*' is only in the cultivation column. That itself would not be sufficient to prove that the defendants had any right, title or interest in the property. The defendants have not led any evidence to prove that they have any right to continue in possession of the disputed land. They have failed to prove their

sole defence that they have perfected their title by way of adverse possession. In these circumstances, the First Appellate Court has erred in dismissing their suit. The First Appellate Court has also erred in observing that the plaintiffs failed to prove that they are owners in possession of the suit land. In fact, the plaintiffs have prayed for grant of decree of possession.

12. Keeping in view the aforesaid facts and discussion, the result is inevitable, hence, the present appeal is allowed. The judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

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

March 01st, 2024
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(ANIL KSHETARPAL)
JUDGE

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