

2024:PHHC:134058



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

**RSA-5179-2019 (O&M)
Reserved on : 09.09.2024
Pronounced on : 15.10.2024**

LACHHMAN @ LACHHU

....Appellant

VERSUS

DARSHANI DEVI AND OTHERS

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Mamli, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by defendant No.1-appellant challenging the judgment and decree dated 29.05.2012 passed by the Trial Court and the judgment and decree dated 10.08.2016 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed the present suit for possession *inter alia* alleging that the suit property i.e. *Bara* measuring 6 Kanals bearing Khewat/Khatouni No.297/393 Khasra No.254 situated in Village Tibbi Araiyan, Tehsil Chhachhrauli, District Yamuna Nagar was owned and possessed by her. Previously her father, namely, Saharu was the owner in possession of the suit property who died about 40 years ago and after his death the plaintiff-respondent No.1 being the only legal heir inherited the suit property. It was further the pleaded case that the mother of the plaintiff-respondent No.1, namely, Sibba had also expired. Her brother, namely,

Mansa had died issueless while the other brother, namely, Khushia Ram and his wife had also died issueless. It was further pleaded that Mutation No.897 regarding inheritance of the property of her father, namely, Saharu had also been sanctioned in her favour. It was further the case that about 7 years ago the plaintiff-respondent No.1 had constructed two rooms and one *chapper* in front of the rooms in the suit property out of her own funds and was living there. On 15.04.2006 defendant No.1-appellant along with other defendants (respondents No.2 to 5 herein), after breaking open the lock, encroached upon the rooms and the *chapper* illegally and also filled foundation for other rooms at the spot by taking advantage of her absence. When she returned on 25.04.2006 she requested the defendants to vacate the premises, however, they refused to do so. Hence, the civil suit. The defendants in their joint written statement denied the averments made in the plaint and raised preliminary objections qua maintainability, mis-joinder and non-joinder of necessary parties. It was stated that the father of the plaintiff-respondent No.1, namely, Saharu never remained in possession of Khasra No.256 as alleged. Status of the plaintiff-respondent No.1 being daughter of Saharu was also denied and that mutation No.897 in favour of plaintiff-respondent No.1 was wrong, illegal, null and void having got entered in connivance with the revenue authorities. It was further averred that the defendants were in possession of the suit property since the time of their ancestors and had raised construction of their house over the same for the last more than 50 years. No replication was filed.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to a decree for possession of land/bara as fully detailed in the head note of the plaint, situated in Village Tibbi Arriayan, H.B. No.179, Tehsil Chhachhrauli, District Yamuna Nagar, by way of vacating two rooms and *chapper* and by removing the foundations and other appurtenant thereon, as prayed for ? OPP
2. Whether plaintiff is entitled to recovery of *mesne* profits @ ₹50 per day for wrongful use and occupation of suit land by defendants from the date of institution of suit till delivery of possession ? OPP
3. Whether defendants are liable to be restrained from raising any construction and from damaging the rooms and *chapper* existing in the suit property and from changing the existing position of the suit property by way of digging or in any manner ? OPP
4. Whether suit of the plaintiff is not maintainable ? OPD

5. Whether suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties ? OPD
6. Whether the plaintiff has not come to the Court with clean hands ? OPD
7. Relief.

4. The Trial Court decreed the suit vide judgment and decree dated 29.05.2012. Aggrieved by the same an appeal was preferred by defendant No.1-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 10.08.2016. Hence, the present regular second appeal by defendant No.1-appellant.

5. The learned counsel for defendant No.1-appellant would contend that defendant No.1-appellant and other defendants (respondents No.2 to 5 herein) have been in possession of the suit property since time immemorial and that they have constructed over the suit property. It is further the contention that the plaintiff-respondent No.1 has no right over the suit property and the Courts have erred in decreeing her suit.

6. Heard.

7. In the present case it was concurrently held by both the Courts that mutation No.897 regarding inheritance (Ex.P-9) had been sanctioned in favour of the plaintiff-respondent No.1 after the death of her father, namely, Saharu. Defendant No.1-appellant while appearing in the witness box as DW-4 admitted that the plaintiff-respondent No.1 was the only daughter of Saharu. It was further held that a suit for possession by one of the co-sharers against the trespasser was maintainable. Both the Courts further relied upon

the report of the Local Commissioner which showed the defendants to being in illegal possession of the suit property. It was also admitted by defendant No.1-appellant that the report was prepared by the Local Commissioner in his presence. The defendant No.1-appellant herein failed to lead any evidence to show that he was owner of the suit property. Though the case set up was that the defendant No.1-appellant was the owner, however, no evidence was lead in this regard. In the absence of any evidence that the defendant No.1-appellant had any right, title or interest in the suit property, no fault can be found with the judgments and decrees passed by both the Courts. No other point was argued.

8. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.10.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No