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

RSA-1045-2018 (O&M)

Date of Decision : 09.12.2024

Krishna Devi (deceased) through LRs & Ors.

... Appellant(s)

Versus

Bal Krishan & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sudhir Aggarwal, Advocate for the appellants.

ALKA SARIN, J. (Oral)

1. The present regular second appeal has been preferred by the plaintiff-appellants challenging the judgments and decrees dated 31.07.2014 and 18.07.2017 passed by the Trial Court and the First Appellate Court, respectively.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants filed the present suit for permanent injunction averring therein that the plaintiff-appellants and proforma defendant-respondent Nos.4 to 13 are the legal heirs and successors of their common ancestor Badlu Ram and are co-sharers/co-owners in joint possession to the extent of their share since the time of their ancestors i.e. more than 60 years qua the property measuring 230 sq. yards comprising of Khewat No.3309/2894, Khata No.4589, Khasra No.1501, total 0 Bigha 2 Biswas 0 Biswani, vide jamabandi for the year 1991-92 and mutation No.14902 dated 15.06.1991 shown in red colour marked by letters ABCD in the site plan attached with plaint within the revenue estate of village Gurgaon, Tehsil and District

Gurgaon. It was further averred that before the plaintiff-appellants their forefathers were in possession of the suit land and there existed a pucca well, tin shed and boundary wall over the suit land. The name of Badlu still existed on the boundary wall of the well and the defendant-respondents had no right, title, interest in the suit property and they were total strangers. Injunction was sought for restraining the defendant-respondents from encroaching upon the suit land and raising construction and dispossessing the plaintiff-appellants. In the written statement various preliminary objections were raised by the defendant-respondent Nos.1 to 3. On merits, it was denied that Badlu Ram was the common ancestor of the plaintiff-appellants and the proforma defendant-respondent Nos.4 to 13. It was also denied that they were co-sharers/co-owners of the suit land. It was further averred that in case the name of Badlu had been recorded in the revenue record, the same was against facts and the entries were illegal. It was further averred that the plaintiff-appellants are not in possession of the suit land. It was further the stand that the suit land being ancestral was owned and possessed by the defendant-respondent Nos.1 to 3. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are co-owners in possession of land mentioned in para no.1 of the suit ? OPP
2. If issue no.1 is proved, whether the plaintiffs are entitled for a decree of permanent injunction as prayed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD

4. Whether the plaintiffs have not come to the Court with clean hands and have suppressed the material facts ? OPD

5. Relief.

3. The Trial Court vide judgment and decree dated 31.07.2014 dismissed the suit. Aggrieved by the same, an appeal was preferred before the First Appellate Court which appeal was also dismissed vide judgment and decree dated 18.07.2017. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellants would contend that the Courts have erred in dismissing the suit. It is urged that the suit land was a vacant piece of land and, hence, the possession would go with ownership and that sufficient evidence was produced on the record to show the ownership of the plaintiff-appellants. However, no evidence was led to the contrary by the defendant-respondents.

5. Heard.

6. In the present case both the Courts concurrently found that the plaintiff-appellants though had claimed that they had inherited the suit land of Badlu Ram, but there was nothing produced on the record as to how they had inherited the property of Badlu Ram. The jamabandi for the year 1945-46 (Ex.D6) showed the land in the ownership of Manohar son of Chiranji Lal.

7. It is trite that in a suit for permanent injunction, only possession was to be seen. In the present case it has come on the record that there was a boundary wall around the suit land of about a height of 7 ft. with a gate. The

defendant-respondent Nos.1 to 3 used to park their vehicles in the said disputed property and the suit land was also found to have been constructed upon and the defendant-respondent Nos.1 to 3 were running a Ration Depot and the Ration Depot continued for one year and thereafter the suit property was locked by the defendant-respondent Nos.1 to 3 as the plaintiff-appellants had raised the dispute regarding the ownership of the suit land. No evidence was led by the plaintiff-appellants to show their possession. The argument of the learned counsel for the plaintiff-appellants that being an empty plot, the possession would go with ownership deserves to be rejected in view of the concurrent findings of the Courts that there was a construction on the suit property.

8. In view of the above, no fault can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

09.12.2024

Yogesh Sharma

(ALKA SARIN)

JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO