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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of Decision: 29.02.2024.

Baljeet and others

...Appellants.

Versus

Ajmer and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr.Vijay Kumar Sheoran, Advocate
for the appellants.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellants/ plaintiffs against the concurrent findings recorded by both the Courts below vide which the suit of the plaintiffs was dismissed.

2. Brief facts of the case as per plaint are that the appellants/ plaintiffs filed a suit for declaration to the effect that they and proforma defendants are owners in exclusive possession of suit land according to their shares and entries in cultivation column of jamabandi for the year 1999-2000 and 1994-95 in favour of defendants are wrong and are liable to be rectified. Plaintiffs and defendants are residents of village Mokhra Kheri Roze, Teshil Meham, District Rohtak. The plaintiffs and the performa defendants are owners in exclusive cultivating possession of the land comprised in Khewat No.171/ 291, Khatoni No.421, Khasra No.6394/4972/1 (0-13), 4973(2-1), 6277/4644, 4722 (0-11), 5185/4717-

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4720 (0-18) and khatoni No.391, Khasra No.6394/4972 (1-0), total measuring 5 Bighas 3 Biswas, situated within the revenue estate of village Mokhra Kheri Roze and the defendants have n concern with the same. Nihal Singh, who was common ancestor of the plaintiffs and defendants No.6 to 11, had two sons namely Rati Ram and Raj Singh. Rati Ram and Raj Singh inherited total land measuring 386 Bighas 16 Biswas in equal shares from their father and later on, a family settlement was made regarding the cultivating possession over the total land including the land under tenancy. The family settlement was also incorporated in the revenue record and since then the parties and their legal heirs are in exclusive cultivating possession over the land as per the family settlement. The land in exclusive cultivating possession of Rati Ram and Raj Singh was depicted in the jamabandi for the year 1952-53 in Khewat No.116/130, Khatoni No.737 to 768. The suit land is also part of the aforesaid land. The land comprising in Khasra No.6025/3867 (1-0), 6446/5069 (0-12), 6396 (5075) (1-12), 5070 (1-8), 5071 (0-10), 6465/5076 (1-2), 6453/ 5348 (1-0), 3751 (3-9), 5968/3752 (2-12), 5963/3746 & 3747 (2-5), total measuring 19 Bighas 15 Biswas, was under mortgage and the same was got redeemed by Raj Singh, who later on, acquired ownership right exclusively regarding the same and therefore, a separate Khewat No.117 was formed for this land. After acquiring exclusive ownership and possession of the aforesaid land by Raj Singh, the joint land of both the parties remained 367 Bighas 1 Biswa, in equal shares and both the parties are in exclusive possession under family settlement, as depicted in the jamabandi for the year 1952-53. Rati Ram has been shown in

exclusive possession on various khasra numbers of the land total measuring 182 Bighas 19 Biswas and Raj Singh has been shown in exclusive possession of the land measuring 185 Bighas 12 Biswas out of the land measuring 367 Bighas 1 Biswa, due to clerical mistake. The land comprised in khasra No.5185/4717, 4720 (0-18) was also under possession of Rati Ram although depicted under cultivating possession of Raj Singh inadvertently. Since then till now, there is no change in cultivating possession of the parties. Rati Ram was in cultivating possession of the land in dispute and now being legal heirs of Rati Ram, the plaintiffs and the proforma defendants are in cultivating possession of the suit land. Later on, Rati Ram and Raj Singh transferred some of their shares in favour of their sons and remaining shares were inherited by their legal heirs after their death. Similarly, the shares of legal heirs were inherited further by their own legal heirs after their death. The same entries continued upto jamabandi for the year 1979-80. In the year 1989, Balraj Singh purchased the land from Khewat No.123 min as per jamabandi Khatoni Istemal for the year 1987 vide sale deed No.263/1 dated 08.06.1989 and sale deed No.622/1 dated 09.10.1989 from Jai Singh son of Raj Singh. In the said sale deeds, Jai Singh has been shown as vendor of the land in dispute and delivery of possession to the vendees has been wrongly shown. Actual physical possession of the suit property was never given to the vendees and it is in actual physical possession of the plaintiffs and proforma defendants. On the basis of above mentioned sale deeds, the defendants, in collusion with the revenue authorities, got their named entered in the jamabandi for the year

1994-95 and the same was depicted in the jamabandi for the year 1999-2000 and subsequent khasra girdawari entries, which are absolutely wrong, against law and facts, without jurisdiction and the same are liable to be rectified in favour of the plaintiffs and the proforma defendants.

3. The suit of plaintiffs was dismissed by the trial Court, vide judgment and decree dated 19.08.2019. The appeal preferred by the appellants/ plaintiffs before the First Appellate Court was also dismissed, vide judgment and decree dated 15.10.2022. Hence, the present Regular Second Appeal has been filed by the appellants/ plaintiffs.

4. Learned counsel for the appellants/ plaintiffs has contended that both the Courts below have not appreciated the documentary evidence produced by the appellant in the right and legal perspective and they have failed to consider the fact qua their exclusive cultivating possession over the suit land from 1952-53 till date. The plaintiffs have been in continuous, settled, legal and valid cultivating possession over the suit land from 1952-53 till date on the basis of their ownership rights. He has further contended that due to non-process of consolidation work, it is not feasible and practical to partition the joint khewat in the village Mokhra Kheri Roze, but the proprietors are in cultivating possession as per their shares on the basis of their private partition/ family settlements/ arrangements and they are in actual physical possession as owners. But the courts below had overlooked and ignored the actual factual situation surrounding the disputed land and failed to infer from the facts pleaded and the evidence adduced qua the same. The nature and contents of the sale deed Ex.D1 and D2 have also not

been properly appreciated in which wrong, illegal and invalid contents have been intentionally, knowingly and fraudulently mentioned, in order to defeat the rights of the appellants/ plaintiffs qua the suit land. Vide sale deeds Ex.D1 and Ex.D2, the father of respondents No.6 to 10 namely, Jai Singh sold these specific killa and khasra numbers to the father of respondents No.1 to 5, namely, Balraj without any partition of the joint agricultural land which is legally not possible and now respondents No.1 to 5 are adamant to take possession over the suit property on which appellants/ plaintiffs are in cultivating possession since long. So without any partition, respondents No.1 to 5 cannot take possession over the specific killa and khasra numbers of the suit land, which is joint agricultural land holding and there are number of co-sharers in this land. He has also contended that the Courts below should have appreciated that any change in the entries in the jamabandi and khasra girdawari qua the suit land without any order from the competent authority are prima facie illegal, wrong and deserve to be rectified. The Courts below have thus failed to take notice of the fact that the appellants/ plaintiffs are in exclusive cultivating possession over the suit land.

5. I have heard learned counsel for the appellants and gone through the records thoroughly.

6. The plaintiffs claimed declaration to the effect that they alongwith perma defendants are owners in exclusive possession over the suit land. From the jamabandi of suit land for the years 1999-2000, 1994-95 and 1979-80 Ex.P1 to P3, it is revealed that the appellants/ plaintiffs and the perma defendants are not recorded as absolute owners or in exclusive

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possession of aforesaid land in dispute. It is well settled law that presumption of truth is attached to the entries in the jamabandi unless the same are rebutted. But no cogent evidence has been led by the plaintiffs to rebut the same.

7. The plaintiffs have also not led any evidence to prove any family settlement by virtue of which they claim that the exclusive possession of the suit land had come to the share of their predecessors in interest. Rather from the sale deed Ex.D1 and Ex.D2, it transpires that the vendor Jai Singh had transferred specific killa numbers in favour of vendee Balraj. The alienation of specific killa numbers through the sale deeds shall be considered as alienation of the share of the vendor. Nothing has been proved on record that the vendor was not a co-sharer in the suit land and was thus not entitled to alienate the land. The aforesaid sale deeds have not been challenged by the plaintiffs and are still existing as valid conveyance deeds.

8. In the previous litigation titled as 'Anand and others Vs. Ajmer and others' Civil suit No.30 of 2010 and Appeal No.18 of 2011/2014, it has already been settled that the plaintiffs are not in exclusive possession of the suit land. To prove it, respondents/ defendants have placed on record copies of judgment and decree dated 09.12.2011 passed by learned Additional Civil Judge, Meham Ex.D3 and Ex.D4 and copies of judgment and decree dated 27.08.2015 passed by Learned Additional District Judge, Rohtak Ex.D5 and Ex.D6, wherein it was held that the plaintiffs have failed to prove their exclusive possession over the land in dispute. Plaintiff No.1, plaintiff No.2,

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plaintiff No.3 and defendants No.1 to 10 in this case, were parties in that suit and the land in dispute was the same land, which is the suit land in the present case.

9. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

10. Appeal stands dismissed.

11. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

29.02.2024.
komal

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No