

2024:PHHC:135824



105.

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

RSA No.5525 of 2018 (O&M)

Date of decision: 01.05.2024

Chanchal Singh and Ajaib Singh (both deceased) through their respective
legal heirs

.... Appellants

Versus

Joginder Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Balbir Singh Jaswal, Advocate for the appellants.

GURBIR SINGH, J.

1. Present regular second appeal has been filed by the plaintiffs against the concurrent findings of courts below dismissing their suit filed against the defendant-respondent for possession of suit land described in the headnote of the plaint.

2. The parties herein are being addressed as per their original status before the trial Court.

3. The case of the of the plaintiffs is that they filed a suit for possession of land measuring 4 kanals 16 marlas on the ground that they were in actual physical and exclusive cultivating possession over the suit land as co-sharer. The plaintiffs mortgaged the suit land with one Baldev Singh and lateron, got the suit land redeemed from said Baldev Singh on

11.10.1982 and mutation regarding redemption of suit land was also sanctioned vide mutation No.433, dated 30.09.1993 and plaintiffs entered into exclusive possession over the suit land. The defendant filed a civil suit in the year 1994 against the plaintiffs for permanent injunction, however, vide judgment and decree dated 22.05.1996, said suit was dismissed. The defendant had illegally and forcibly, with the help of some unidentified persons, dispossessed the plaintiffs from the suit land about two months ago before the filing of suit. The plaintiffs obtained a copy of jamabandi for the year 2005-06 and it transpired that the defendant in collusion and conspiracy with revenue officials got stray entry effected in his favour in the cultivation column. The said entry is illegal, ultravires, null and void.

3.1 Upon notice, the defendant contested the suit and filed written statement that the plaintiffs were never in actual physical and exclusive possession over the suit land. Harnam Singh was the co-sharer of suit land and he executed sale deed dated 11.04.1974 in favour of the defendant. The Khasra girdawaris were recorded since sauni 1991 showing the exclusive possession of the defendant as co-share over the suit land. The defendant by moving an application got corrected the khasra girdawaris in his name vide order dated 07.04.1995. The plaintiffs contested the said order upto the court of Additional Commissioner, Jalandhar, but his prayer was declined. It was submitted that the plaintiffs earlier filed a suit whereby present suit land was also a part of total land and the plaintiffs had taken a plea that suit

land is in joint possession with the defendant. So, the plaintiffs are estopped from taking a plea that they are in exclusive possession over the suit land.

3.2 After framing the issues, plaintiff No.1 was examined as PW1, plaintiff No.2 as PW2 and plaintiffs closed their evidence and thereafter, the defendant examined Bakshish Singh as DW1, Jagdish Singh as DW2 and Joginder Singh himself as DW3 and closed the evidence.

3.3 To prove possession over the suit property, the plaintiffs proved mutation No.433, dated 30.09.1993 Ex.P1 with regard to redemption of suit property; proved jamabandis for the year 1990-91 (Ex.P2) and for the year 2005-06 (Ex.P3); khasra girdawaris till 2011 as Exs.P4 to P6, but in column No.4 of jamabandi Exs.P2 and P3, exclusive possession of defendant was reflected and even in mutation Ex.P1, defendant was shown to be in exclusive possession over the suit land. So, the trial Court came to the conclusion that plaintiffs being one of the co-sharers along with defendant have better remedy to file a suit for partition of the property and suit was not maintainable under Section 41 of the Specific Relief Act.

3.4 Vide judgment and decree dated 30.09.2014, the trial Court dismissed the suit and in appeal, said findings were affirmed before the learned appellate Court vide judgment and decree dated 13.03.2018.

4. Learned counsel for the appellant has argued that the defendant is claiming ownership on the basis of sale deed dated 11.04.1975 Ex.D1, which is based on jamabandi for the year 1970-71, which is out of

the total joint khata. After the jamabandi 1970-71 till 2001-01 Ex.P2, name of defendant does not figure in the cultivation column. There is no order of any authority regarding the delivery of possession of the suit land in favour of defendant. Any change made in the subsequent jamabandi without any order of delivery of possession does not affect the rights of the plaintiffs.

5. I have heard the submissions of learned counsel for the appellants.

6. The instant suit has been filed by the plaintiffs that they were in actual physical and exclusive cultivating possession over the suit land as co-sharers. The defendant had illegally and forcibly and with the help of some unidentified persons dispossessed the plaintiffs from the suit land about two months prior to the filing of the suit, after the harvest of wheat crops by the plaintiffs. The plaintiffs have not filed the suit under Section 6 of the Specific Relief Act (for short, the Act). It is not specifically mentioned that the suit was filed under Section 6 of said Act. Even in the grounds of appeal, it is not pleaded that inadvertently Section 6 of the Act could not be mentioned in the heading of the plaint. Under such circumstances, the learned Appellate Court has wrongly held that it could be gathered that the suit for possession had been preferred on the basis of previous possession under Section 6 of the Act although said Section was not mentioned. Both the courts below held that the plaintiffs failed to prove that they were dispossessed two months prior to the filing of the suit. The learned lower Appellate Court, considering the fact that the suit was filed

under Section 6 of the Act, held that the appeal was not maintainable. A person coming to the court must come to the court with clean hands. Vague plea or seeking vague relief disentitles a plaintiff for entitlement of the relief prayed for. The court could gather only if the case of the plaintiffs was that inadvertently Section 6 of the Act could not be mentioned in the plaint. Case of the plaintiffs is that they had mortgaged the suit property with Baldev Singh in the year 1975 but they failed to produce any such mortgage although some pages of alleged mortgage deed were produced in the cross-examination of Ajaib Singh PW1 but said documents remained unproved on the file and cannot be read. So the case of the plaintiffs is based only on mutation No.433 dated 30.09.1993 Ex.P1. On the other hand, defendant had proved that he had purchased the suit property from the original co-sharer Harnam Singh vide sale deed dated 11.04.1975 Ex.D1. The khasra girdawaris were recorded in favour of defendant since sauni 1991. The plaintiffs failed to prove that they were in exclusive possession of the suit property. There is no revenue entry showing exclusive possession of the plaintiffs on the suit property. The plaintiffs failed to produce evidence that entries in the khasra girdawaris in favour of the defendant were the result of fraud. Thus, the plaintiffs being co-sharers, are not entitled to seek possession by simply filing the suit for possession and it is rightly held by the courts below that the plaintiffs are entitled to get possession of their share by way of partition.

7. The courts below have recorded concurrent findings of facts. There is neither any misreading nor misappreciation of evidence. No substantial question of law is involved in the present appeal. The appeal is without any merit and is dismissed accordingly.
8. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

May 01, 2024
sanjeev

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