

2024:PHHC:123697



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

105

**RSA-811-2018 (O&M)
Date of Decision : 18.09.2024**

Jagjit Singh

....Appellant

VERSUS

Mehar Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

ALKA SARIN, J. (Oral)

CM-2004-C-2018

1. This is an application for condonation of delay of 42 days in filing the present appeal.

2. For the reasons stated in the application, the same is allowed.

The delay of 42 days in filing the present appeal is condoned.

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3. Present appeal has been preferred by defendant No.2 challenging the judgment and decree dated 13.01.2012 passed by the Trial Court and the judgment and decree dated 17.07.2017 passed by the First Appellate Court.

4. The brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 to 4 filed a suit for permanent injunction averring therein that a *Bara (gair mumkin)* comprised in Khewat No.802/787 Khatauni

No.1200, Khasra No.269 (0-5) situated in the revenue estate of village Amin, Tehsil Thanesar, District Kurukshetra as per Jamabandi for the year 1999-2000 was in their possession and that the defendants be restrained from interfering in their possession. The defendants filed a joint written statement raising various preliminary objections and claimed that they were in possession of the suit property since the time of their forefathers. It was further the case set up that the plaintiff-respondent Nos.1 to 4 were residing at village Poojam, Tehsil Nilokheri, District Karnal since 14.06.1971, which is about 30 kms. from the suit property, so the question of using the suit property by the plaintiff-respondent Nos.1 to 4 did not arise. It was further the case that the property was exchanged by the predecessor of the plaintiff-respondent Nos.1 to 4 with the predecessor of the defendants. It was further the case that the ownership of the *Bara* was that of the Gram Panchayat and hence there was no mention in the exchange deed regarding the *Bara* and the same was an oral exchange. Replication was not filed. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are entitled to a decree for permanent injunction restraining the defendants from dispossessing them from the suit property, as prayed for ? OPP
2. Whether the suit is not maintainable ? OPD
3. Whether the plaintiffs have no locus standi and cause of action to file and maintain the present suit ? OPD
4. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties ? OPD
5. Relief.

5. The Trial Court decreed the suit vide judgment and decree dated 13.01.2012. Aggrieved by the same an appeal was preferred, which appeal was dismissed vide judgment and decree dated 17.07.2017. Hence, the present regular second appeal.

6. Learned counsel for the defendant No.2-appellant would contend that the exchange deed (Mark 'A') has not been read properly inasmuch as the plaintiff-respondent Nos.1 to 4 were not residing in village Amin but were residing in village Poojam. It is further the contention that the entire land of the defendant No.2-appellant was exchanged with that of the plaintiff-respondent Nos.1 to 4 by their forefathers which included the *Bara*. However, the *Bara* was not mentioned in the exchange deed as the ownership was that of the Gram Panchayat.

7. Heard.

8. In the present case both the Courts have concurrently found that sufficient evidence was led by the plaintiff-respondent Nos.1 to 4 to show that they were in possession of the suit property. The Jamabandi and the Khasra Girdawari (Exs.P1, P2 and P3) relied upon by the plaintiff-respondent Nos.1 to 4 clearly show that the plaintiff-respondent Nos.1 to 4 were in possession of the suit property. Ex.P4 was a judgment passed in a case filed by the defendant No.2-appellant herein against the plaintiff-respondent Nos.1 to 4 for declaration which suit was dismissed vide judgment and decree dated 01.11.2011 for having failed to lead any evidence. Learned counsel for the defendant No.2-appellant has not been able to point out to any evidence even remotely showing that the defendant

No.2-appellant was in possession over the *Bara* in question. Rather, defendant No.2-appellant failed to even produce an iota of evidence to counter the evidence led by the plaintiff-respondent Nos.1 to 4.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.09.2024
jk

(ALKA SARIN)
JUDGE

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