



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.219 of 2024 (O&M)
Reserved on : 23.07.2024
Date of Decision : 26.07.2024

Lakshman alias Lachhman and AnotherAppellants

VERSUS

Raj Singh and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.S. Khurana, Advocate for the appellants.

ALKA SARIN, J.

1. Present appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 25.11.2019 passed by the Trial Court and the judgment and decree dated 16.10.2023 passed by the First Appellate Court.
2. The brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for permanent injunction for restraining the defendant-respondents from encroaching upon the suit land and dispossessing the plaintiff-appellants therefrom and from changing the nature of the suit land. It was the case set up by the plaintiff-appellants that the predecessor-in-interest of the plaintiff-appellants, namely, Nathu Ram, being the proprietor of village Asaudha Todran, was owner in exclusive possession over a plot measuring 1050 sq. yards marked by letters ABCD in the site plan comprised in Khewat No.527 Min Khatauni No.9.1054 Min and Khasra No.2932, situated within the abadi of village Asaudha Todran, Tehsil

Bahadurgarh, District Jhajjar. It was further the case that sugarcane expeller was also installed which remained in existence upto 1965 and that they had filled the earth upto the height of 6 ft. after investing huge amount in the month of January 2015. It was further the case that the suit land was being used for tethering their cattle, storing fuel wood, preparing cow dung cakes, parking agricultural equipment, etc. It was also the case set up that they planted trees on the said land and since the defendant-respondents threatened to encroach upon the suit land, the present suit was filed. The suit was contested by the defendant-respondents averring that the plaintiff-appellants were not the owners in exclusive possession of Khasra No.2932 as alleged by them and that the defendant-respondents are Biswedara of village Asaudha Todran having common rights in the Shamlat land of the village. It was further the case set up that the defendant-respondents were exclusive owners of the suit land and that they had constructed their houses and installed gates etc. Replication was filed reiterating the contents of the plaint and denying those of the written statement. 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 as prayed for ? OPP
2. Whether the plaintiffs have no locus standi to file the present suit ? OPD
3. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
4. Whether the plaintiffs are estopped by their acts and conduct to file the present suit ? OPD

5. Whether the plaintiffs have suppressed the material facts from the Hon'ble Court and have not come to the court with clean hands ? OPD

6. Relief.

3. The Trial Court dismissed the suit holding that the plaintiff-appellants have failed to prove their exclusive possession over the suit land. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed vide judgment and decree dated 16.10.2023. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellants would contend that both the Courts have erred in dismissing the suit of the plaintiff-appellants. It is argued that the plaintiff-appellants have been in exclusive possession of Khasra No.2932 and that the site plan (Ex.P1) clearly proves their possession over the suit property.

5. Heard.

6. In the present case both the Courts have concurrently held that as per Jamabandi for the year 2006-07 (Ex.P2) the suit land is owned and possessed by *abadi deh* and that the suit land being *shamlat* vests in the Gram Panchayat. The plaintiff-appellants did not implead the Gram Panchayat, which is a necessary party. Further still, the Khasra Girdawari (Ex.D4) shows the defendant-respondents to being in possession of the suit land. Not an iota of evidence was available on the file to even remotely suggest that the plaintiff-appellants were in possession of the suit land. A mere site plan cannot be treated to be a proof of possession. Even before this Court the learned counsel for the plaintiff-appellants has not been able to point out anything on the record to conclusively establish the exclusive

possession of the plaintiff-appellants over the suit land. Counsel for the plaintiff-appellants has been unable to dislodge the findings of fact recorded by both the Courts. No other point was argued. In the absence of any cogent proof regarding exclusive possession of the plaintiff-appellants, no fault can be found with the judgments and decrees passed by both the Courts.

7. 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.

26.07.2024
jk

(ALKA SARIN)
JUDGE

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