



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1152-2020 (O&M)

Reserved on : 11.02.2025

Pronounced on : 18.02.2025

Dalip Kumar and Others

....Appellants

VERSUS

Smt. Rama Devi @ Rameshwari and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kamal Narula, Advocate for the appellants.

ALKA SARIN, J

CM-3613-C-2020

1. For the reasons stated in the application, the same is allowed. The delay of 482 days in filing the present appeal is condoned.

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2. Present appeal has been preferred by defendant Nos.2 to 4 challenging the judgment and decree dated 12.09.2016 passed by the Trial Court and the judgment and decree dated 31.07.2018 passed by the First Appellate Court.

3. The brief facts relevant to the present *lis* are that plaintiff-respondent No.1 herein filed the present civil suit for declaration, symbolic possession and permanent injunction averring therein that Ram Rakh, father of the plaintiff and defendant Nos.2 to 5 has not been heard of for last more than seven years and he is presumed to be dead as such plaintiff-respondent No.1 was owner in possession to the extent of 1/5th share of land measuring 49 Kanals 13 Marlas as fully described in the plaint and further for a decree for permanent injunction restraining the defendants from illegally and

unlawfully inducting any third person. It was further averred in the plaint that Ram Rakh was not seen for the last 13 years and he has been missing and was not heard of. The plaintiff-respondent No.1 approached the authorities for getting the 1/5th share mutated in her name, however, the mutation was not entered. Defendant No.1 being 'general public' did not appear despite publication. Defendant Nos.2 to 5 appeared and filed their written statement taking preliminary objections that the suit of the plaintiff-respondent No.1 was not maintainable and that the facts have been concealed from the Court. The defendant Nos.2 to 5 set up a family settlement of the year 1989 and stated that as per family settlement Rakh Ram during his lifetime divided the property between his three sons i.e. the appellants herein in equal shares and that they are in possession of their respective shares on the basis of the said family settlement.

4. On the basis of pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for declaration to effect that Ram Rakh son of Dattu Ram son of Mana is presumed to be dead being unheard for the last seven years ? OPP
2. If issue no.1 proved, whether plaintiff is entitled to be declared as owner in possession of 1/5th share of land measuring 49 Kanal 13 Marla as detailed in the head note of plaint ? OPP
3. If issue no.1 and 2 are proved, whether plaintiff is entitled for consequential relief of delivery of symbolic possession of suit land in favour of plaintiff ? OPP
4. Whether plaintiff is entitled for the consequential relief of permanent injunction as prayed for ? OPP

5. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
6. Whether the plaintiff has no cause of action or locus standi to file the present suit ? OPD
7. Whether plaintiff is estopped by her own act and conduct from filing this suit ? OPD
8. Whether the plaintiff has concealed the material and patent facts from this court and is not entitled to the relief as claimed ? OPD
9. Relief.

5. The Trial Court vide judgment and decree dated 12.09.2016 decreed the suit of the plaintiff-respondent No.1. Aggrieved by the same, an appeal was preferred by the defendant Nos.2 to 4 i.e. appellants herein, which appeal was dismissed by the First Appellate Court vide judgment and decree dated 31.07.2018. Hence, the present regular second appeal by the appellants.

6. Learned counsel for the appellants would contend that both the Courts have erred in decreeing the suit of the plaintiff-respondent No.1. It is urged that there was a family settlement which took place during the lifetime of Ram Rakh. On the basis of the family settlement the three sons of Ram Rakh i.e. the appellants herein were put in possession of their respective shares as is reflected in *khasra girdawaris* produced on the record.

7. Heard.

8. In the present case the only challenge laid to the judgments and decrees passed by both the Courts is that there had been a family settlement during the lifetime of Ram Rakh in the year 1989 and the entire property was divided by Ram Rakh between his three sons i.e. appellants herein and that the appellants were in possession of their respective shares. A perusal of the judgments and decrees passed by both the Courts reveals that not an iota of

evidence was led by the appellants herein qua the alleged family settlement. Neither the mutation was recorded nor entries in the *jamabandi* were changed. The reliance of learned counsel for the appellants on the entries in the *khasra girdawaris* would not come to his aid as only a presumption of truth is attached to the *khasra girdawaris*. These entries at best only show the possession of the appellants but do not prove the existence of any family settlement. In the absence of any evidence having been led by the appellants qua the family settlement, no fault can be found with the judgments and decrees passed by both the Courts. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the appellants for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

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.

18.02.2025
jk

(ALKA SARIN)
JUDGE

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