



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

RSA-5288-2019 (O&M)
Reserved on : 10.02.2025
Pronounced on : 18.02.2025

Surinder Kumar & Ors.

....Appellants

VERSUS

Makhan Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amandeep Singh Jawandha, Advocate for the appellants.

ALKA SARIN, J.

CM-14977-C-2019

1. For the reasons mentioned therein, the application seeking condonation of 17 days delay in filing the appeal is allowed. The delay of 17 days delay in filing the appeal is condoned.

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2. The present appeal has been preferred by the defendant-appellants challenging the judgment and decree dated 12.10.2017 passed by the Trial Court and judgment and decree dated 08.05.2019 passed by the First Appellate Court.

3. Brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for permanent injunction averring that the suit property was owned and possessed by his grandfather who used to live with the plaintiff-respondent and after the death of the grandfather the plaintiff-respondent was in possession and using it for tethering cattle. There were two temporary cattle sheds and an open kitchen in the suit property which fell

within the red line of the village and thus no revenue record thereof was available. As per the plaintiff-respondent the defendant-appellants were permanent residents of Nabha, and their ancestors had sold all the property including land in the village. The defendant-appellants were threatening to dispossess the plaintiff-respondent from the suit property by claiming that it belonged to their forefathers though they had no right, title or interest therein. Hence, the present suit. The defendant-appellants contested the suit and in the written statement denied that the grandfather of the plaintiff-respondent was owner in possession of the suit property or that the suit property was in possession of the plaintiff-respondent. It was claimed that the suit property was their ancestral property where their predecessors used to reside. Parshotam Dass, father of defendant-appellant No.1, remained in possession of the suit property till his death and after him the defendant-appellants are in exclusive possession thereof. It was alleged that the suit had been filed only to grab the suit property. Replication was filed denying the averments made in the written statement and reiterating those made in the plaint.

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

1. Whether plaintiff is entitled to injunction as prayed for ? OPP
2. Whether suit is maintainable in present form ? OPD
3. Whether plaintiff has not come to the court with clean hands, if so its effect ? OPD
4. Relief.

5. The Trial Court vide judgment and decree dated 12.10.2017 decreed the suit and restrained the defendant-appellants from causing interference in the possession of the plaintiff-respondent and from dispossessing him from the suit property illegally and forcibly, except in due course of law. Aggrieved by the decision of the Trial Court, an appeal was preferred by the defendant-appellants which appeal was dismissed by the First Appellate Court vide judgment and decree dated 08.05.2019. Hence, the present regular second appeal by the defendant-appellants.

6. The learned counsel for the defendant-appellants has contended that both the Courts have erred in decreeing the suit of the plaintiff-respondent. It is urged that the suit property is the ancestral property of the defendant-appellants and that they were in possession and therefore the Courts ought not to have granted relief to the plaintiff-respondent. Reliance was sought to be placed on declarations Ex.D2 to Ex.D11 and the agreement dated 27.06.2001 Mark-D1.

7. Heard.

8. In the present case the dispute in the suit is qua possession and not title. Both the Courts have upheld the possession of the plaintiff-respondent and decreed his suit for injunction. The Trial Court found that the *“possession of plaintiff stands proved from the cross examination of witnesses of the defendants. Merely because the disputed property was ancestral property in the hands of forefather of the defendants, does not mean that they are in actual and physical possession thereof even today. No doubt, plaintiff could not establish his title over the suit property, but he being in settled*

possession has every right to protect the same until he is dispossessed therefrom by recourse to law". The possession of the plaintiff-respondent was also upheld by the First Appellate Court. The declarations Ex.D2 to Ex.D11 and the agreement dated 27.06.2001 Mark-D1 also do not further the case of the defendant-appellants. Except for one person, none of the other declarants stepped into the witness box to depose in support of the declaration signed by them. The agreement MarkD1 was not proved in accordance with law and in any event, it does not establish the possession of the defendant-appellants. 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 defendant-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 discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.02.2025

Ankur

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No