
(1984) 02 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Seeand Appeal No. 1590 of 1975 C.M. 3108 C-1983

Balwant Singh

APPELLANT

Vs

Dharam Pal and Others

RESPONDENT

Date of Decision: Feb. 8, 1984

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: R.L. Sarin, for the Appellant; R.L. Nirola, for the Respondent

Final Decision: Allowed

Judgement

J.V. Gupta, J.

This is Plaintiff's second appeal whose suit for the grant of the permanent injunction was decreed by the trial Court, but dismissed in appeal.

2. The Plaintiff filed the suit for the grant of the permanent injunction restraining Defendants Nos. 1 to 3 from interfering with his possession of the suit land. It was alleged that he was the owner in possession of the suit land. Previously, one Nanku cultivated the land as a tenant, but he relinquished his tenancy rights on October 23, 1970 and, thereafter he has been in cultivating possession of the same. It was also alleged that Defendants Nos. 1 to 3 had no connection whatsoever with the land, in dispute. Since they were threatening to dispossess him forcibly and illegally; hence the present suit. The Defendants denied the allegations in their written statement. It was averred that the suit land was in their cultivating possession as tenants under the owners. The trial Court found that the Plaintiff was in self-cultivating possession of the suit land. In view of this finding, the Plaintiff's suit was decreed. In appeal, the learned Senior Subordinate Judge with enhanced appellate powers reversed the said finding of the trial Court and came to the conclusion that the Plaintiff was not in possession of the suit land and that the possession thereof was that of Defendants Nos. 1 to 3, as tenants. Consequently, the Plaintiff's suit was dismissed. Dissatisfied with the same, the Plaintiff has come up in second appeal to this Court.

3. During the pendency of the appeal, the Plaintiff also moved an application under Order XI1 Rule 27, Cede of CPC (Civil Miscellaneous Application No. 3108-C of 1983), for permission to adduce additional evidence. Notice of the said application was given to the Respondents who filed the reply dated December 15, 1983. Vide application, the Plaintiff wanted to produce the certified copy of the judgment of the Subordinate Judge, First Class, Pathankot, dated April 26, 1973, by virtue of which the suit filed by Defendants Nos. 1 to 3 in the present suit, against the other heirs of Chhajju Ram and Nanku, for the grant of the permanent injunction restraining them from interfering with their possession of the suit land was dismissed. The said decree and judgment of the trial Court dismissing the Plaintiffs' suit was maintained in appeal vide order dated May 3, 1976, by the lower appellate Court. In the said suit it was held that Defendants Nos. 1 to 3 in the present suit, were not proved to be the tenants on the suit land, nor they were found to be in possession thereof. Admittedly the decision in the former suit has become final between the parties as the regular second appeal against the judgment and decree of the lower appellate Court in the said suit, was also dismissed in limine by this Court on September 10, 1976. It was held in the said suit that the Defendants (the Plaintiffs in the previous suit) assumed self cultivation of the suit land after the relinquishment of the tenancy by Nanku on October 23, 1970, and since then the landowners had been in self-cultivating possession of the suit land. It was further found that the Defendants in the present suit had failed to prove their occupation of the suit land as the tenants on the date of the Institution of the suit. Since the said judgment in the suit was delivered after the present suit was decided by the trial Court on December 22, 1972, and is relevant for the disposal of the appeal, the said judgment, and the judgments in appeal and the second appeal arising therefrom, are allowed to be brought on the record by way of additional evidence.

4. Once it has been held that Defendants Nos. 1 to 3 were not in possession of the suit land as tenants as alleged by them, then the Plaintiff's suit must succeed. In view of the judgments produced by way of additional evidence, no meaningful argument could be raised on behalf of the Defendants-respondents to uphold the judgment of lower appellate Court.

5. Consequently, this appeal succeeds and is allowed. The judgment and decree of the lower appellate Court are set aside and that of the trial Court decreeing the Plaintiff's suit are restored with costs.

Appeal allowed.