

(2009) 04 P&H CK 0345

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Om Parkash

APPELLANT

Vs

Ram Singh and Others

RESPONDENT

Date of Decision: April 21, 2009

Citation: (2010) 8 RCR(Civil) 950

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

This is an appeal preferred by one of the plaintiffs directed against the judgments of the learned Trial Court dated 27.11.2006 and that of the learned First Appellate Court dated 29.1.2009.

2. The appellant alongwith two other persons namely Prithvi Singh and Jai Singh filed a suit for permanent injunction to restrain the defendants from interfering in their land in which they were in joint cultivating possession. It is pleaded that the plaintiffs alongwith two persons namely Ram Singh and Surinder Singh arrayed as defendants No. 1 and 4 who are real brothers are joint owners cum lessees in possession of the suit property and that defendant No. 1 was abusing his position as Secretary, Market Committee, Bhiwani to dispossess the plaintiffs from the suit property.

3. The said respondent No. 1 filed a written statement admitting the relationship but denied the other averments made in the plaint. It was pleaded that all the brothers with the intervention of the relatives have entered into a written settlement on 7.6.1992 and thereafter they continued to be in possession of their respective shares and in a sense a partition had been effected inter se between them.

4. Both the parties went to trial on the following issues:

1. Whether the plaintiffs and defendant No. 1 are in joint possession in the column of cultivation of the suit land as permanent lessee as alleged in the plaint? OPP.
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP.
3. Whether the suit of the plaintiff is wrong, against law and facts and is liable to be dismissed? OPD.
4. Whether the suit of the plaintiff is liable to be dismissed in the present form? OPD.
5. Whether the plaintiffs have no locus standi to file the present suit? OPD.
6. Whether the plaintiffs have not come to court with clean hands, if so to what effect? OPD.
7. Whether the suit of the plaintiff is false and frivolous? OPD.
8. Whether the defendants are entitled for special cost from plaintiffs u/s 35-A Code of Civil Procedure? OPD.
9. Whether the civil court has no jurisdiction to try the present suit? OPD.
10. Whether the plaintiffs have not served any notice to the defendants No. 2 and 3 u/s 80 Code of Civil Procedure? OPD.

11. Relief.

5. Both the Courts concluded that the settlement dated 7.6.92 which was on record as Ex. D-1 was not a registered document and could not be looked into and consequently discarded it. Findings thereafter were returned that that since both the parties are joint owners in possession and there being no partition inter se between them, the prayer of injunction could not be granted.

6. Since one of the plaintiffs Om Parkash-the present appellant is aggrieved by the findings of the Courts below he has filed the instant regular second appeal.

7. It has been contended by the learned Counsel for the appellant that findings recorded by the Courts below are erroneous. It is further the case of the appellant that once Ex. D-1 has been discarded which was the document on the basis of which a settlement was pleaded by the respondents then in such an eventuality the suit of the appellant should have been decreed.

8. I have heard learned Counsel for the appellant and have perused the impugned judgments.

9. The respondents had pleaded family settlement dated 7.6.92 which is on record as Ex. D-1. This document was specifically discarded by both the Courts below and no reliance was placed upon it and once this document is not accepted then the status of the appellant and the respondents becomes that of co-owners in joint possession without there being any partition and one co-owner cannot obtain an

injunction against the other. There is no evidence to show that they are in settled possession of their respective shares for an inordinately long period from which it could be inferred that the parties by their conduct had made an arrangement to be in settled possession of some specific areas of the property in question. That being the situation, the findings of the Courts below cannot be termed to be erroneous so as to warrant interference in a regular second appeal. No substantial question of law has been shown to have arisen in the present appeal and the same being devoid of any merit is hereby dismissed.