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(2013) 08 P&H CK 0706

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2451 of 1992 (O and M)

Shri Surinder	APPELLANT
Vs	
Chhajju Ram and Others	RESPONDENT

Date of Decision: Aug. 1, 2013

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: Kewal Singh, for the Appellant; B.R. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.
The defendant is in second appeal aggrieved against the judgment and decree passed by the learned trial Court on 16.03.1991 and modified by the learned first Appellate Court on 25.11.1992. The plaintiff invoked the jurisdiction of the Civil Court alleging that he is in possession of the suit land since the time of his forefathers, therefore, the defendant be restrained from interfering in such possession forcibly. The defendant contested the suit and pleaded that plaintiff is not owner and in possession of the suit land. The possession of the forefathers of the plaintiff was also denied. It was asserted that the suit land is part and parcel of the agriculture field of defendant No. 1.

2. On the basis of pleadings of the parties, the learned trial Court framed the following issues:-

1. Whether the plaintiff is owner in possession of the suit land as alleged? OPP

2. Whether the suit land is the part and parcel of the agricultural land belonging to defendant No. 1 and the defendant No. 1 has raised construction of the boundary wall over the same, as alleged? OPD

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Whether the suit is bad for mis-joinder of necessary parties? OPD

6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

7. Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD

8. Relief

3. It is the issue No. 1 which is important in the present appeal. On the said issue, the learned trial Court recorded a finding that plaintiff is owner and in possession of the suit land. Consequently, the learned trial Court decreed the suit. However, in appeal preferred by the defendant, the finding regarding ownership was set aside. It was held that Khasra No. 134//1/2 was owned by the defendant over which the plaintiff is claiming possession. The finding of the learned trial Court was modified holding that the plaintiff is in possession of the suit land but defendant No. 1 is the owner of the same. After returning such finding, decree was partly modified. The defendant was restrained from interfering in plaintiff"s possession of the suit land except in due course of law.

4. In the present second appeal, the plaintiff has not raised any substantial questions of law. The findings recorded by the learned first Appellate Court are sought to be disputed by seeking re-appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration. Consequently, the finding of fact recorded by the learned first Appellate Court regarding ownership of the suit as that of the defendant cannot be said to be suffering from any patent illegality and irregularity. I do not find any merit in the present second appeal. Consequently, the present regular second appeal is dismissed.