

(2013) 08 P&H CK 0711

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 2400 of 2013

Hans Raj and Another

APPELLANT

Vs

Bhagwan Dass and Another

RESPONDENT

Date of Decision: Aug. 21, 2013

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Kamal Narula, for the Appellant;

Judgement

L.N. Mittal, J.

Defendants have filed this revision petition under Article 227 of the Constitution of India challenging judgment dated 15.01.2013 (Annexure P-2) passed by the lower appellate court. Respondents/plaintiffs filed suit against defendants/petitioners for permanent injunction alleging that plaintiffs are in possession of the suit land measuring 21 kanals 10 marlas as tenants under the owners Raj Kumari etc. Defendants have no concern with ownership or possession of the suit land, but they threatened to take forcible possession thereof. Plaintiffs sought permanent injunction restraining the defendants from doing so. Plaintiffs also claimed temporary injunction to the same effect during pendency of the suit.

2. Defendants resisted the claim of the plaintiffs and pleaded that they are in possession of 16 kanals land out of the suit land. Defendants also made counter-claim seeking to injunct the plaintiffs from interfering in possession of the defendants on the said land. They also claimed temporary injunction to the same effect during pendency of counter-claim. It was pleaded that Bhagwan Dass-plaintiff no. 1 and Gurriya Ram-father of defendants were real brothers and they separated the cultivation of the land and accordingly, defendants' father came in possession of 16 kanals land out of the suit land.

3. Learned trial court, vide order dated 03.08.2010 (Annexure P-1), dismissed the plaintiffs' application for temporary injunction and allowed the application of defendants for temporary injunction qua 16 kanals land out of the suit land and plaintiffs were restrained from interfering in possession of the defendants thereon and from dispossessing them therefrom forcibly and illegally, except in due course of law. However, appeal against the said order, preferred by the plaintiffs, has been allowed by the lower appellate court vide judgment Annexure P-2 and thereby, plaintiffs' application for relief of temporary injunction has been allowed and defendants' application for temporary injunction has been dismissed. Feeling aggrieved, defendants have filed this revision petition to assail the judgment Annexure P-2 passed by the lower appellate court.

4. I have heard counsel for the petitioners and perused the case file.

5. Counsel for the petitioners, referring to paragraph 4 of order Annexure P-1, passed by the trial court, contended that Khasra Girdawari since Kharif 1990 till Rabi 1993 depicted possession of defendants' father over 16 kanals land claimed by the defendants, and therefore, temporary injunction was rightly granted by the trial court. The aforesaid contention cannot be accepted. Perusal of impugned judgment of the appellate court reveals that in jamabandis right since 1966-67 till 1991-92, spread over more than 25 years, possession of plaintiffs was continuously recorded over the suit land. Possession of plaintiffs over the suit land has also been depicted in Khasra Girdawari till the same was changed by Assistant Collector Second Grade, vide order dated 13.10.2008, against which appeal and revision preferred by the plaintiffs stand dismissed vide orders dated 23.12.2009 and 01.11.2012 by Collector and Commissioner respectively. However, suit had been filed on 09.06.2008. Thus, initial order by Assistant Collector, changing Khasra Girdawari in favour of defendants was passed during pendency of the suit. Consequently, much significance cannot be attached to the said order of the Assistant Collector, as upheld by revenue authorities in appeal and revision. In fact, the revenue authority should have stayed their hands regarding change of Khasra Girdawari when Civil Court was already seized of the matter. On the contrary, there is continuous revenue record depicting possession of plaintiffs over the suit land over a long period till filing of the suit and presumption of correctness attached in jamabandis has not been rebutted by defendants in any manner. On the contrary, the said presumption gets doubly strengthened because there are consistent entries spread over a long period in different jamabandis. For the reasons aforesaid, I find that the plaintiffs are prima facie in possession of the suit land, and therefore, temporary injunction has rightly been granted in their favour and declined to the defendants by the lower appellate court. There is no perversity, illegality or jurisdictional error in the impugned judgment of the lower appellate court so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The revision petition is devoid of substance and is accordingly dismissed in limine. However, nothing observed hereinbefore shall be construed as expression of

opinion on merits of the suit.