

(2010) 10 P&H CK 0317

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 4863 of 2009 (O and M)

Sukhwinder Singh and Others

APPELLANT

Vs

Smt. Swarni

RESPONDENT

Date of Decision: Oct. 25, 2010

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This is Plaintiffs" second appeal challenging the judgment and decree of the Lower Appellate Court, whereby while accepting the appeal filed by the Defendant-Respondent, judgment and decree of the trial Court was set aside.

2. As per the averments made in the suit, Appellants had sought permanent injunction against the Respondent from interfering in their peaceful possession over the suit property on the basis of oral tenancy in their favour. However, the trial Court found that the Plaintiff-Appellants have failed to prove the tenancy. Since the Appellants were found to be in a long settled possession of the property in dispute, injunction was granted against the Respondent not to interfere in their possession except in due course of law.

3. Against the aforesaid judgment and decree of the trial Court, an appeal was filed by the Defendant-Respondent which was accepted. While accepting the appeal, the Lower Appellate Court has concurred with the finding of the trial Court holding that the evidence led by the Plaintiff-Appellants was not sufficient to prove that they were tenants over the suit property. The Lower Appellate Court further held that no injunction can be granted in favour of the Appellants and against the Respondent who is the true owner of the suit property.

4. Still not satisfied, the Plaintiffs/Appellants have approached this Court by way of this appeal.

5. Learned Counsel for the Appellants has vehemently argued that in view of the fact that they have been found to be in long and settled possession of the suit property they are entitled to protect their possession even in the absence of any tenancy in their favour and the possession can be taken from them, only in due course of law.

6. On the other hand, learned Counsel appearing on behalf of the Respondent has argued that Respondent is a true owner. This Court in the case of Sukhwant Singh v. Divisional Forest Officer 2009(3) PLR 432 has held that no injunction can be granted against a true owner at the asking of a person who is in unauthorised possession, therefore, the appeal is liable to be dismissed.

7. A concurrent finding of fact has been recorded by the courts below that Appellants have failed to prove their oral tenancy over the suit property. It is well settled that no injunction can be granted at the asking of an unauthorised person against the true owner. The possession of the Appellants over the suit property, in the absence of any title, permissive or otherwise, is unauthorised.

8. Therefore, applying the rule laid down by this Court in Sukhwant Singh's case(Supra), I find no merit in this appeal.

9. No substantial question of law arises in this appeal.

10. Dismissed.