

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No. 4487 of 2005  
Date of Decision: 31.7.2007

Sarbati and others

.....Appellants

Versus

Hari Singh and others

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Kul Bhushan Sharma, Advocate, for the appellants.

Shri Sanjay Mittal, Advocate, for the respondents.

HEMANT GUPTA, J.

The plaintiffs are in second appeal, aggrieved against the judgment and decree passed by the Courts below, whereby their suit for permanent injunction in respect of the land measuring 1 marla Chahi, comprising in Khasra Nos. 677 and land measuring 6 biswasi Gair Mumkin Chah comprising in Khasra No. 678 in the village Karawara, was dismissed.

It is the case of the defendants that the suit land is not part of Khasra Nos. 677 and 678 as alleged by plaintiffs and that defendant Nos. 1 to 3 are owners in possession of the property falling in Khasra No. 269 and the suit land situated towards the northern side of Khasra No. 269. It is also the stand of the defendants that after Khasra No. 269, there is a rasta and thereafter, towards the north eastern side, there is the property of Mange Ram and that the plaintiffs are not in possession of any part of the property.

Both the Courts have dismissed the suit holding that the plaintiffs have failed to prove their possession over any part of the Khasra Nos. 677 and 678.

The learned first Appellate Court found that the plaintiffs have relied upon Jamabandi for the years 1953-54 Exhibit PC, wherein predecessor-in-interest of the plaintiffs are recorded to be the owners, but it was found that the plaintiffs have not led any evidence to show that they remained in possession of the disputed land bearing Khasra Nos. 677 and 678, as depicted in the site plan. It was found that the plaintiffs have not produced on record jamabandis for the subsequent years to identify the suit property, as indicated in the site plan. It was also found that the plea raised by the appellants that during consolidation proceedings Khasra Nos. 677 and 678 amalgamated in abadi, is again not proved as no evidence has been led. It was found that the plaintiffs have failed to establish the identity of the property in respect of which, the plaintiffs are claiming possession.

Learned counsel for the appellants has vehemently argued in the present second appeal that the record of amalgamation of Khasra Nos. 677 min and 678 min in the abadi is not available and for that reason, the record could not be produced at the time of leading of evidence and that from a perusal of Musavi Exhibit DX8/T read with Exhibit DX3/T, it is evident that the plaintiffs have established their possession over Khasra Nos. 677 min and 678 min.

Both the Courts have considered the entire evidence to return a firm finding of fact that the plaintiffs have failed to prove their possession over Khasra Nos. 677 min and 678 min. The plaintiffs have not got the land demarcated so as to identify the land which is alleged to be in

their possession and forming part of the aforesaid Khasra Numbers. The plaintiffs have not produced any revenue record to the effect that such Khasra Nos. now stood merged with abadi. There is no evidence on record to the effect that such record is not available.

Consequently, the finding recorded by the Courts below, that the plaintiffs have failed to establish their possession over the suit land and that the plaintiffs have failed to identify the suit property, cannot be said to be suffering from any patent illegality or irregularity, which may give rise to any substantial question of law in the present appeal. Hence, the present appeal is dismissed.

It is needless to say that the present suit is a simplicitor suit for injunction and therefore, the parties are at liberty to establish their title in appropriate proceedings, in accordance with law.

31-07-2007  
ds

(HEMANT GUPTA)  
JUDGE