

Brief facts of the case are that the plaintiffs (appellants herein) had filed a suit for declaration to the effect that they have become owners of the suit land, fully detailed in the plaint, on account of their having been in continuous possession as tenants for more than hundred years under the express and implied contractual

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conditions of never to eject. The permanent injunction was also sought for restraining the defendant (respondent herein) from dispossessing the plaintiffs/appellants from the suit land, measuring 30 kanals 17 marlas, by force and without due course of law. The land is described as khasra Nos. 451, 476 min South and 477, as per the Jamabandi for the year 1976-77 of village Daulatpur, Tehsil Pathankot.

According to the plaintiffs/appellants, the plaintiffs and before them, their predecessors-in-interest have been in continuous possession of the suit land as tenant for more than hundred years. There is an express and implied promise on the part of the defendant/respondent and his predecessor-in-interest not to eject the plaintiffs/appellants from the suit land. The plaintiffs/appellants have made considerable improvements upon the suit land before bringing it under cultivation. They have also constructed cattle sheds and rooms for their residences. Some of the land was also acquired by the Land Acquisition Department. The arrangement for drinking water has also been made through Municipal Committee and fruit bearing trees have also been planted by the plaintiffs/appellants and their forefathers. They have become occupancy tenants of the suit land within the meaning of Section 8 of the Punjab Tenancy Act No. 16 of 1887. As such, right of ownership also vested in them on the commencement of proprietary

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rights in the Occupancy Tenants Act No. 8 of 1953.

The defendant/respondent denied that the plaintiffs/appellants or their predecessors-in-interest are in continuous possession or having been cultivating the suit land for more than hundred years. It was stated that they have never been the tenants in the suit land. The express or implied promise was also denied. It was claimed that defendant/respondent was the owner in possession of the suit land. Therefore, the question of plaintiffs/appellants becoming occupancy tenants under Section 8 of the Punjab Tenancy Act, 1887, does not arise. The plaintiffs/appellants also have not acquired the proprietary rights in the Occupancy Tenant Act, 1953.

From the pleadings, following issues were framed :-

1. Whether the plaintiffs have become owners of the suit land by the Pb. Occupancy of Tenants (Vesting of Proprietary Rights) Act, 1956 ? OPP
2. Whether the plaintiffs are entitled to the injunction prayed for ?
OPP
3. Relief.

The lower Court, after discussing the revenue record and the statement of the parties held that the plaintiffs/appellants have nowhere recorded as occupancy tenants. However, it was held that the plaintiffs/appellants are recorded as tenant in the suit land

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barring 6 kanals 16 marlas of khasra No. 451 Min, 3 kanals, bearing khasra No. 477 min and 3 kanals of khasra No. 477 min. Therefore, injunction was granted regarding said khasra numbers by restraining the defendant/respondent from interfering in the peaceful possession of the plaintiffs/appellants over the said land. In this way, the suit was partly decreed. The judgment and decree of the lower Court was reversed in appeal by the learned Additional District Judge, Gurdaspur.

After going through the file, following substantial point of law is framed :-

- “1. Whether the findings recorded by both the Courts below are perverse and against the record and are liable to be set aside ?”

I have heard the learned counsel for the parties and have also carefully gone through the file.

At the very outset, it is pointed out that regarding the proprietary rights, certain other proceedings were pending between the parties. Some other proceedings were also pending regarding the surplus land allotted to the plaintiffs/appellants. The copies of orders of the revenue authorities in this regard have been placed on file.

I am of the view that the controversy as to whether the land has become surplus and was rightly or wrongly allotted to the

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plaintiffs/appellants is not the subject matter of the present dispute and is to be decided by the competent authority. This Court only confines to the fact as to whether the plaintiffs/appellants are in peaceful possession of the suit land, as determined by the lower Court or whether the plaintiffs/appellants have failed to prove their possession ? It also comes out that two writs are already pending between the parties regarding the land being declared surplus and allotted to the plaintiffs/appellants. Therefore, this Court will refrain from making any comments on the said controversy involved in the said writs or the matters pending before the revenue authorities.

The perusal of the revenue record shows that the judgment and decree passed by the lower Court is based on findings recorded after going through the revenue record. The appellate Court has upset the findings on the basis of some entries in khasra girdawari in the Jamabandis produced by the defendant/respondent (Ex. D1, Ex.D2 and Ex. DW2/B).

I am of the view that the first appellate Court erred in interfering in the findings of facts recorded by the lower Court. Plaintiffs No. 1 to 3 are the sons of Wadhawa Ram and plaintiff No. 4 is the son of Mangu Ram. If the revenue record is perused, it will make out that the findings recorded by the lower Court are correct. In the copy of jamabandi for the year 1976-77 (Ex.P1), Sardari Lal was recorded in possession to the extent of $\frac{1}{2}$ share and Jaswant

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Singh, Dharam Pal and Satpal, sons of Wadhawa Ram were recorded in possession as *gair dakhildar* in the land bearing khasra No. 451 Min East (13-1), 476 Min South (10-16) and 477 (7-0). Similarly, in the jamabandi for the year 1966-67 (Ex.DW2/D), Wadhawa Ram and Mangu Ram sons of Dullo were recorded as *gair dakhildar*. The revenue records from the year 1885-86 onwards have been produced to claim that the said Wadhawa Ram and Mangu Ram were in possession as tenant. Even in the copy of the khasra girdawari for the years 1962-63 to 1973-74 (Ex.DW2/A), it comes out that same entries are reflected with some change. In the khasra girdawari for 1972, the area measuring 6 kanals 16 marlas is reported to have been delivered to Colonization Department, vide rapat No. 117 dated 17.11.1971 out of khasra No. 451. Similar entries are found in the subsequent khasra girdawari for the years 1974-75 to 1980-81 (Ex.DW2/B). Therefore, if any change in khasra girdawari has been made from year 1974-75 regarding khasra Nos. 477 and 477 min, as reflected in khasra girdawaris (Ex.D2 and Ex.D3), the same is not binding on the plaintiffs/appellants. The khasra girdawari cannot be changed without the consent of the person recorded in possession. It is also not shown as to how the defendant/respondent regained the possession. Therefore, these were rightly ignored by the lower Court. Regarding khasra No. 477, the possession of Sardari Lal etc. as *gair dahildar* is shown.

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I am of the view that the findings recorded by the first appellate Court are perverse and against the record. Learned senior counsel for respondent has relied upon the authorities of the Apex Court in Deity Pattabhiramaswamy Versus S. Hanymayya and others, AIR 1959 Supreme Court, 57; Arjan Singh Versus Kartar Singh and others, AIR (38) 1951 Supreme Court, 193 as well as the authority of this Court in Hari Singh (Decd.) and another Versus Financial Commissioner, Punjab and others, Revenue Law Reporter 1973, 10.

As discussed above, the appellate Court has reversed the well reasoned judgment of the lower Court, therefore, none of the authorities would apply to the present case. Even though in the second regular appeal, this Court is not to interfere in the findings of facts recorded by the lower Court, but where the findings of the first appellate Court are found to be perverse and the well reasoned judgment of the lower Court has been reversed, the High Court is always competent to interfere and set aside the findings of the first appellate Court, which are against the record. The lower Court has recorded the findings on the basis of record. It being so, the present appeal is allowed. The impugned judgment and decree dated 14.2.1986, passed by the learned Additional District Judge, Gurdaspur, is set aside and the judgment and decree dated 26.2.1985, passed by the learned Additional Senior Sub Judge,

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Pathankot, is restored.

The appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

8.10.2015
sjks