

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.613 of 1987

Date of Decision: 09.03.2015

Jagat Singh (since deceased) through LRs and others

..... APPELLANTS

VERSUS

Harjinder Kaur and others

..... RESPONDENTS

PRESENT: - Mr. A.K. Chopra, Senior Advocate with
Mr. Harminder Singh, Advocate
for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Alok Jain, Advocate
for the respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 1) Whether Reporters of the local papers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

SHEKHER DHAWAN, J.

This Regular Second Appeal is directed against judgment and decree dated 13.11.1986 passed by the Court of Additional District Judge, Jalandhar whereby the judgment and decree dated 11.09.1985 passed by Sub Judge, Ist Class, Jalandhar was set aside and the appeal was accepted by the First Appellate Court.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that Smt. Harjinder Kaur and Smt. Baljit Kaur in their capacity as legal representatives of Harmoinder Singh filed a suit for permanent injunction against Jagat Singh for restraining him from interfering in the possession of the plaintiffs in the area comprised in khewat No.993/1082, khasra Nos.1095,2588/1096, 1097, 1098, 1099 measuring 16 kanal 3 marla except about one kanal on which the defendant had built his house in the estate of Basti Sheikh, Jalandhar. As per plaintiffs, the land in dispute was purchased by Harmohinder Singh in an open auction held by the Rehabilitation Department. The area was evacuee acquired property. After the death of the purchaser, ownership devolved upon the plaintiffs and out of the suit land, the defendant constructed a house on about one kanal of land which was un-demarcated. The plaintiffs objected to the same. The defendant moved an application for correction of the khasra girdawari but the same was never

pressed and was dismissed on 16.04.1980. Still the defendant used to threaten to dis-possess the plaintiffs forcibly from the land in dispute for which he has no right to do so and, as such, the necessity of suit before the Court of first instance.

The defendant contested the suit by taking preliminary objections that the plaintiffs have got no locus standi to file the suit and that the suit is not maintainable. On merits, the defendant denied that the plaintiffs are owners or in possession of the property in dispute. The defendant also denied the fact that predecessor-in-interest of the plaintiffs had purchased the same from the Rehabilitation Department. The defendant also took the plea that he was in possession of the property in question as he had built a house and a shop on the same by spending a huge amount and had been raising crop and trees over the remaining part of the property in question.

Learned trial Court settled the following issues and the parties were put to trial:

1. Whether the plaintiffs are owners in possession of the suit property? OPP
2. Whether the plaintiffs are estopped from filing the suit? OPD
3. Whether report of local Commissioner dated 1.2.83 is liable to be not considered? OPP

4. Whether plaintiffs are entitled to the injunction as prayed for? OPP

5. Relief.

Learned Court of first instance after considering the material and evidence available on file decided issue No.1 that the plaintiffs are owners of the suit property but they are not in possession of the same and as such, issue No.1 was partly decided in favour of the plaintiffs and partly in favour of the defendant. Issue No.2 was decided against the defendant being not pressed whereas issue No.3 was decided against the plaintiffs and consequently the suit of the plaintiffs for issuance of permanent injunction was dismissed.

Being aggrieved of passing of said judgment and decree, the plaintiffs/appellants challenged the same by way of first appeal.

Learned Court of first appeal reversed the findings of learned Court of first instance while observing that the findings of the trial Court to the effect that the plaintiffs are not in possession of the suit property are erroneous. The said findings were returned in favour of the plaintiffs and held that plaintiffs are entitled for injunction as prayed for. Hence the present Regular Second Appeal before this Court.

When the present Regular Second Appeal was admitted, no substantial questions of law were framed. However, substantial questions of law were placed on record by learned counsel for appellant on 21.10.2013.

Mr. A.K. Chopra, learned Senior Advocate representing the appellant i.e. legal representatives of Jagat Singh took the plea that learned Court of first instance had rightly recorded the findings of fact that the plaintiffs were not in possession of the suit property rather Jagat Singh, predecessor-in-interest of the plaintiffs was in possession of the suit property. The said findings were based on the basis of revenue record i.e. Ex.P-4. As per Ex.P-4, the entry was recorded by the Patwari. Although the plaintiffs were not in possession of suit property, no suit for possession was filed at any stage. These facts have not been considered by the learned Court of first appeal while reversing the findings recorded by the learned Court of first instance which are based on oral as well as documentary evidence.

Learned Court of first appeal completely ignored the fact that the defendant-appellant had already raised a construction of colony and small owners were residing in the same and the defendant was in a established possession of the suit property.

While arguing on this point, Mr. Arun Jain, learned

counsel for the respondent took the plea that it is not disputed in any way from the defendant's side even. The plaintiffs-respondents are the owners of the suit property. The appellant-defendant has simply taken the plea that he has raised construction of house on the said land. As per para 1 of written statement filed by the defendant, the defendant took the plea regarding construction of house and raising of crop on the remaining land. The report of Local Commissioner to that effect is on the file. An application for correction of girdawari (Ex.P-2) was filed and same was dismissed in default on 16.04.1980. The relevant '*rapat*' is dated 24.06.1982 (Ex.P-3) Jamabandi. Ex.P3/1 is on the basis of '*rapat rojnamcha*'.

Learned counsel for the respondents mainly took the plea that the appellant has come before this Court by way of second appeal challenging the findings of fact regarding possession of the property but the same cannot be looked into while deciding the Regular Second Appeal. The revenue entries which were recorded during pendency of Civil Suit are not binding upon the Civil Court.

Learned Court of first appeal has rightly recorded the findings that if there are equally balancing evidence then possession is to follow the title. The said findings of fact cannot be challenged before this Court by way of

second appeal and otherwise also on merit, there are no grounds to satisfy the said findings based on legal proposition. So the appeal be dismissed.

This Court has given considerable thought to the arguments advanced by learned counsel for both the parties.

The first point involved in this case is that the defendant-appellant has come to this Court by way of the present appeal. The appellant has challenged the findings of fact regarding possession. The said findings regarding possession have been duly considered and appreciated on the basis of record and evidence by both the Courts below. The law on the point is settled that this Court while deciding Regular Second Appeal is to look into and decide the appeal involving substantial questions of law and not to look into the question of fact. Such a law was laid down by Hon'ble Supreme Court in case of **Bhuri Bai Vs. Ram Narayan**, 2009(4) SCC 56 and observed as under:

“The High Court after considering these issues involved in this case rightly held that no substantial question of law is involved and the finding which is sought to be impugned in the second appeal is based on question of fact and appreciation of evidence, and they do not call for any interference under Section 100 of the Civil Procedure Code, 1908.”

In **Govind Das Vs. Kanhiya Lal and another**, 2000(9) SCC 219, Hon'ble the Apex Court had seized off similar controversy involving second appeal require to look into possession of land and Hon'ble Supreme Court laid down the law that as per provisions of Section 100 of Civil Procedure Code, 1908 if the issue involved is as to when the respondent got into possession of land in question, same is a pure question of fact and not a question of law. The said findings are not perverse and interference with such finding of fact by the High Court is illegal.

Identical law was laid down by Hon'ble Supreme Court in **Sadhu Ram and others Vs. Financial Commissioner Haryana and others**, 2005(10) SCC 226.

As regards to proposed substantial questions of law placed on file by learned counsel for the appellants, the same have been considered. None of the same involved substantial questions of law rather the same relates to appreciation of evidence and primarily relates to facts only. Hence, no interference by way of the present Regular Second Appeal is justified on those grounds.

Otherwise also, as in this case correction of khasra girdawari was recorded during pendency of Civil Suit and such entries cannot be taken into consideration in Civil Court because khasra girdawari entries are to be assessed

independently. Such a view was held by this Court in **Gian Chand Vs. Kultar Singh**, 1984 RRR 92, **Gurnam Singh and others Vs. S. Jagjit Singh Rosha**, 1975 PLJ 505, **Samma Singh Vs. Kapur Singh and others**, 1997(2) RCR (Civil) 103, **Niranjan Singh and others Vs. Financial Commissioner, Punjab (Revenue) and others**, 1979 PLJ 352.

Otherwise also, the land in question was admittedly purchased in an open auction by Harmohinder Singh husband of Harjinder Kaur plaintiff No.1 and father of plaintiff No.2. After his death, the property devolved upon the plaintiffs. The raising of construction by defendant on one kanal of land was objected by the plaintiffs. The defendant had filed an application for correction of khasra girdawari on 16.05.1978 but the same was dismissed on 16.04.1980. Efforts were made by the defendant to reflect his possession in the revenue record but the defendant remained unsuccessful. Still the defendant had been threatening to dis-possess the plaintiffs forcibly.

Learned Court of first appeal has rightly observed that the learned Court of first instance completely ignored the established doctrine that the possession follows title. There was ample evidence on record that the plaintiffs are owners of the suit land. Learned Court of first appeal placed

reliance upon clear admission having been made by the defendant that revenue record i.e. khasra girdawari entry may be made in the name of the plaintiffs. Learned Court of first appeal also placed reliance upon statement made by Jagat Singh on 31.12.1976 that khasra girdawari of khasra No.1097 etc. after leaving aside the area over which he has constructed his house may be recorded in the name of Baljit Kaur and others as self cultivation and he will have no objection to the same.

Learned Court of first appeal has rightly observed that learned Court of first instance was completely swayed away with the findings of the Revenue Court and the plaintiffs were not held to be in possession of the land in dispute while learned Court of first instance completely ignored the document Ex.P-4 dated 31.12.1976 whereby Jagat Singh had made statement that he had no objection if the entries of khasra girdawari of the land after leaving aside the land over which he has constructed the house are made in favour of Baljit Kaur and others. The said statement was made during pendency of the suit and the previous suit filed on 19.01.1976 would not stand in the way of the plaintiffs.

The findings recorded by learned Court of first appeal regarding possession cannot be looked into by way

of the present second appeal and there are no grounds to interfere in the findings of learned Court of first appeal. The same are based on facts of the case, evidence available on the file and correct proposition of law.

Resultantly, the present Regular Second Appeal is without any merit and the same stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

**March 09, 2015
jt**