

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Sr. No.319

RSA-1402-1988

Decided on : 04.11.2015

Bahala and another

.... Appellants

VERSUS

Amar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr.Sandeep Khunger, Advocate, for the appellants.

Mr.M.L.Saini, Advocate, for the respondents.

RAJIVE BHALLA, J. (ORAL)

The appellants challenge judgment and decree dated 05.12.1987, recorded by Sh. K.C.Gupta, the then, Additional District Judge, Ambala, allowing the appeal filed by Amar Singh (respondent No.1) and setting aside the judgment and decree dated 31.10.1986, passed by Sh.R.C.Gupta, the then Sub Judge First Class, Ambala City.

Counsel for the appellants submits that admittedly, jamabandi for the year 1981-82 (Ex.PX) and all other relevant revenue documents, prior to or after the said jamabandi record Nanak and upon his demise Bahala and Mohinder (the appellants) as tenants on payment of chakota on Rs.425/- per annum. Amar Singh (respondent No.1), who also claims tenancy, was not able to refer to any lease deed, pattanama, receipt of payment of rent or any other

revenue entry except to an order passed by the Assistant Collector, IInd Grade, Ambala, which was set aside by the appellate authority. The trial court, therefore, rightly held that as Amar Singh has failed to prove his tenancy and Bahala and Mohinder have been able to prove their tenancy, they have a right to preempt the sale deed executed by Siri Ram, in favour of Harnam Singh. The appellate authority has by a perverse and arbitrary process of reasoning and by discarding relevant evidence held on the basis of an alleged written statement filed by Nanak before the Assistant Collector Ist Grade and an alleged admission made before the said officer that entry in the jamabandi Ex.PX, stands rebutted. Counsel for the appellants further submits that the Advocate who filed the written statement on behalf of Nanak, was not offered for cross examination, thereby ruling out his deposition that he had filed the written statement on behalf of Nanak. The clerk produced by Amar Singh to prove signatures of the Advocate, was admittedly, not working with the Advocate on the relevant date and, therefore, the deposition by the clerk is irrelevant for proving the signatures of Nanak on the written statement and the statement. The alleged signatures of Nanak on the written statement and the statement have not been proved. Counsel for the appellants also submits that a presumption of truth attaches to an entry in a jamabandi and can only be set aside by a civil court. The entire approach by the first appellate court is, thus, not only perverse and arbitrary but contrary to law. The first appellate court

also lost sight of the fact that order passed by the Assistant Collector, IInd Grade, on the basis of these alleged admissions, was set aside by the Collector and was remanded. After remand, no further proceedings were taken, thereby nullifying the alleged reply and statement.

Counsel for the appellants further submits that Bahala and Mohinder, sons of Nanak both Nanak, on the one hand and Amar Singh on the other hand, filed separate suits for preemption of the sale deed, executed in favour of Harnam Singh, asserting their status as tenants. The suits were consolidated. The suit filed by Bahala and Mohinder was decreed by holding that they proved their tenancy. The suit filed by Amar Singh was dismissed by holding that he has not been able to prove his tenancy. Jagjit Singh and Manjit Singh, sons of Harnam Singh (the vendee), filed an appeal by arraying Bahala, Mohinder and Amar Singh as respondents. The appeal was dismissed by the Additional District Judge, Ambala, on 28.10.1988, thereby affirming the finding that Bahala and Mohinder are tenants. Amar Singh though a party to the appeal, but has not filed any appeal. The appeal filed by Amar Singh, was allowed by another Additional District Judge, Ambala, on 05.12.1987, by holding that Amar Singh is the tenant. Thus, there are two judgments passed by two different Additional District Judges, recording different findings as to the person who is a tenant, the person entitled to preempt the sale deed and the legality of the

judgment and decree passed by the trial court.

Counsel for the appellant submits that the following substantial questions of law arise for adjudication: -

1. Whether entry in jamabandi Ex.PX stands rebutted by the written statement allegedly filed and the statement allegedly made by Nanak before the Assistant Collector, IInd Grade, Ambala?
2. Whether in the absence of any pattanama/lease deed/receipts showing payment of rent in favour of Amar Singh, the first appellate court has wrongly held that entries in jamabandi Ex.PX, stand rebutted?
3. What is the effect in law of judgment and decree dated 28.10.1988 recorded by Sh.B.R.Vohra, Additional District Judge, Ambala, affirming the judgment and decree passed by the trial court holding that the appellants are tenants?

Counsel for the respondents submits that the best evidence is an admission. The admission made by Nanak in his reply and in his statement recorded by the Assistant Collector, IInd Grade, are sufficient to prove that Nanak had vacated the land and returned it to the owner who thereafter leased it, through his attorney Khushhal Singh, to Amar Singh. The power of attorney Ex.P1 proves this fact. The oral depositions by the attorney, by Amar Singh and other witnesses prove that Amar Singh was in possession as a tenant on payment of chakota @ 425/- per annum. The mere fact that Amar Singh has not produced the receipts, is irrelevant as Siri Ram's attorneys had admitted receipt of rent. Counsel for respondent (Amar Singh) further submits that the admission by

Nanak and his statement made before the Assistant Collector, IInd Grade, duly proved by the examination of Phool Chand, Advocate and, thereafter by the Advocate's clerk rebuts the entry in the revenue record. The findings recorded by the first appellate court are, therefore, legal and valid and do not give rise to any substantial question of law much less the questions framed by counsel for the appellant.

I have heard counsel for the parties and perused the impugned judgment and decree as well as the evidence on record.

Before proceeding to answer the questions, it would be necessary to briefly narrate the facts.

The dispute, in the present case, briefly put, is whether Bahala and Mohinder or Amar Singh are tenants entitled to preempt the sale deed executed in the present case.

Siri Ram, who was admittedly owner of the land, in dispute, sold the land by way of a registered sale deed, dated 20.02.1978 to Harnam Singh son of Kehar Singh. Bahala and Mohinder, sons of Nanak filed a suit, to preempt the sale deed on the basis of their rights as tenants. Amar Singh filed a separate suit also claiming tenancy and a right to preempt the sale deed. The suits were consolidated. After considering the pleadings and the evidence, the Civil Judge, First Class, Ambala, vide judgment and decree dated 30.10.1986, held that Bahala and Mohinder have succeeded in proving their tenancy by reference to relevant revenue

record and as a consequence, their right to preempt the sale deed. The alleged admissions made by Nanak, father of Bahala and Mohinder, while filing a reply in proceedings for correction of khasra girdawari, filed by Amar Singh as well as a statement to the effect that he has given up his tenancy, was discarded by holding that the signatures of Nanak have not been proved. As regards Amar Singh, the trial court held that he has not been able to prove his tenancy.

Aggrieved by the aforesaid judgment and decree, Amar Singh filed Civil Appeal No.99/13 of 1986, arraying Bahala, Mohinder and LRs of the vendee as respondents in his appeal. Jagjit Singh etc. legal representatives of Harnam Singh, the vendee, filed a separate appeal, Civil Appeal No.194 of 21.11.1986, arraying Bahala, Mohinder and Amar Singh as respondents. The appeals for some reasons came up for adjudication before two different Additional District Judges. The appeal filed by Amar Singh was allowed on 05.12.1987 by holding that Amar Singh and not Bahala and Mohinder, is tenant. The present appeal is directed against this judgment. The appeal filed by Jagjit Singh and Manjit Singh, LRs and sons of vendee Harnam Sigh, was dismissed on 28.10.1988 by holding that Bahala and Mohinder are tenants.

Thus, with respect to the same judgment and decree, passed by the Sub Judge, Ist Class, Ambala, holding Bahala and Mohinder are tenants, there are two judgments, passed by two

different first appellate courts recording different persons as tenants. The judgment, which is impugned in the present appeal holds that Amar Singh is the tenant. The other judgment which holds Bahala and Mohinder as tenants, has not been appealed against by Amar Singh.

The appellants filed, CM-1620-C-2014, to lead into additional evidence judgment and decree dated 28.10.1988, whereby judgment and decree passed by the Sub Judge Ist Class, Ambala, holding that Amar Singh is not a tenant, has been affirmed. The application was allowed on 23.04.2014.

The dispute, as already noticed, is whether Amar Singh or Nanak or after him his sons Bahala and Mohinder are tenants and as a consequence, which out of them is entitled to preempt the sale deed. As already recorded, the trial Court has held that Bahala and Mohinder are the tenants whereas the Additional District Judge, Ambala has held that Amar Singh is the tenant. At the same time, in an appeal filed by the vendor, another Additional District Judge, Ambala, has held that Nanak and upon his demise, Bahala and Mohinder, are the tenants.

Faced as I am with two different judgments relating to the same judgment and decree, it would be appropriate to first examine findings in the impugned judgment, without considering or placing reliance upon the judgment holding Nanak through Bahala and Mohinder, as tenants.

A perusal of the judgment and decree recorded by the trial court reveals that primary reliance was placed upon jamabandi Ex.PX, to hold that Nanak was a tenant of the land, in dispute, on payment of chakota @ Rs.425/- per annum. The first appellate court has, however, held that this entry stands rebutted by an admission made by Nanak in a written statement filed in proceedings before the Assistant Collector, IInd Grade, Ambala and a statement made by him before the said officer that he has given up the land, in dispute, and handed it over to the landlord.

Before answering the questions posed, it would be necessary to briefly refer to the nature and evidentiary value of entries in a jamabandi. A jamabandi is a part of the record of rights prepared under the Punjab Land Revenue Act, 1887 (hereinafter referred to as the "1887 Act"). Section 44 of the 1887 Act attaches a presumption of truth to entries in the record of rights. Section 45 of the 1887 Act provides that anybody aggrieved by any entry in the record of rights may approach a civil court, thus prohibiting a revenue officer from varying an entry in the record of rights, or in a jamabandi, except if parties admit to a change in rights. At this stage, it would be appropriate to point out that though a presumption of truth attaches to an entry in a jamabandi but the presumption so attached, is rebuttable.

The first appellate court has while holding that entry in the jamabandi Ex.PX, recording Nanak and after him Bahala and

Mohinder as tenants, stands rebutted, has relied upon an alleged admission made by Nanak before the Assistant Collector, IInd Grade, Ambala and a statement attributed to him that he has given up the land in favour of the landlord. The first appellate court, in my considered opinion, was not justified in relying upon this evidence, for the following reasons:-

- (a) The order passed by the Assistant Collector, IInd Grade, on the basis of this admission was set aside by the Collector in an appeal filed by Nanak denying these admissions and no further proceedings were taken or initiated.
- (b) Proceedings before an Assistant Collector are admittedly summary in nature and are, therefore, not binding upon a civil court.
- (c) The alleged signatures of Nanak on the alleged written statement or on his alleged statement have not been proved by comparing them with his admitted signatures.
- (d) The Advocate, who filed the written statement, deposed in affirmative but was not offered for cross examination.
- (e) The clerk, who was produced to identify the signatures of Advocate, was not working with the Advocate on the date the alleged written statement was filed or the statement was made.
- (f) The clerk even otherwise was competent to identify the signatures of the Advocate and not the signatures of Nanak.

The fact that signatures of Nanak have not been proved, in my considered opinion, was sufficient to discard these so called

admissions and did not warrant the first appellate court holding that the written statement and the statement are sufficient to rebut the presumption of truth attached to the entry in jamabandi, Ex.PX, recording Nanak and after his demise Bahala and Mohinder, as tenants on payment of chakota @ Rs.425/- per annum. An admission is undoubtedly, best evidence of a fact but has to be proved like any other piece of evidence. Nanak had admittedly passed away. The onus, therefore, lay upon Amar Singh to prove by getting the alleged signatures/thumb impressions of Nanak compared from an expert with his admitted signatures but no such evidence has been adduced.

Apart from the aforesaid facts, the first appellate court failed to discern that Amar Singh has not produced any revenue record, pattanama, lease deed or any revenue document or receipt of rent to evidence his tenancy. The deposition by the attorney of the landlord admitting Amar Singh as a tenant or the receipt of rent is not sufficient to rebut the entry in the jamabandi recording Nanak and after his demise Bahala and Mohinder as tenants. It appears that Amar Singh was set by the landlord to defeat the rights of the tenant. Consequently, the questions (a) and (b) are answered in favour of the appellants by holding that the first appellate court has ignored Sections 44 and 45 of the 1887 Act and, therefore, erred in law while holding that entry in jamabamdi Ex.PX, recording Nanak and after his demise Bahala and Mohinder as tenants, stands rebutted by the so

called admission made by Nanak which as already held, has not been proved.

As regards the third question, the question has been rendered academic but it would be appropriate to point out that the Additional District Judge, Ambala, has held that Nanak and after his demise Bahala and Mohinder are tenants with a right to preempt the land, in dispute. Admittedly, Amar Singh was a party to this appeal but has not challenged these findings by filing a regular second appeal.

Consequently, the substantial questions of law having been answered in favour of the appellants, the appeal is allowed, the judgment and decree dated 05.12.1987 is set aside and judgment and decree passed by the trial Court is restored but with no order as to costs.

04.11.2015

shamsher

[RAJIVE BHALLA]
JUDGE