

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)

RSA No.1155 of 1992 (O&M)
Decided on 18.09.2015

Hardyal & others

...Appellants

Versus

Jiu and another

...Respondents

(2)

RSA No. 1294 of 1992 (O&M)

Om Parkash and others

...Appellants

Versus

Hardyal & others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Sanjay Mittal, Advocate for
for the appellants.

Mr. Ajay Jain, Advocate
for respondent No.1.

Mr. J.P Sharma, Advocate
for respondent No.2.

RAJ MOHAN SINGH, JUDGE

[1] By this common judgment aforesaid two RSAs are being decided. For clarity sake, facts are being taken from RSA No. 1155 of 1992.

[2] Plaintiffs Hardyal & others filed suit for permanent injunction against the defendants for restraining them from interfering in possession of the plaintiffs over the suit land measuring 26 kanals 16 marlas situated in village Mohamadpur, as per Jamabandi for the year 1980-81. Plaintiffs claimed that the entries in the revenue record are wrong and they are in possession of the suit land from the time of immemorial. A petition under Section 7 of the Punjab Village

Common Land Act, 1961 was filed and the same was decided by the Assistant Collector on 26.06.1980, in which possession of the plaintiffs was established over the suit land since 1942-43. Possession of the plaintiff over the suit land was claimed to be continuous and un-interrupted. With this background suit in question was filed against the defendants.

[3] Defendants No. 1 (a) to 1 (c) i.e. legal heirs of Jiu filed written statement, admitting the claim of the plaintiffs. Defendant No.2 however, contested the suit, claiming that he is in possession of the property as co-sharer. Proceedings under Section 7 of the Punjab Village Common Lands Act are not binding upon him as he was not party thereto.

[4] After completion of the proceedings in terms of adjudication, trial Court framed the following issues on 21.04.1987:-

1. Whether the plaintiffs are in exclusive possession of the property in dispute as alleged? OPP.
2. Whether the plaintiffs are entitled to the injunction as prayed for? OPP.
3. Whether the defendant No.2 is co-sharer in the property in dispute as alleged? OPD.
4. Whether the order of AC 1st Grade, Narnaul dated 16.08.1980 is not binding upon the defendants and is liable to be set aside as alleged? OPD.
5. Whether this court has no jurisdiction to try this suit? OPD.
6. Whether the court fee is deficient? OPD.
7. Whether the suit is not maintainable in the present form? OPD.
8. Whether the suit is time barred? OPD.

9. Whether the plaintiffs are estopped from filing the present suit by their act and conduct? OPD.

10. Whether the suit is bad for non-joinder of necessary parties as alleged? OPD.

11. Whether the defendants are entitled for special costs as alleged? OPD.

12. Relief.

[5] Both the parties led their respective evidence on the aforesaid issues. Issue No.1 was of prime importance. Trial Court on the basis of revenue entries on record observed that in view of Jamabandi for the year 1965-66 possession of the plaintiffs is established on record. Subsequent entries also corroborated the aforesaid facts up to March, 1975. Thereafter, portion of the land has been shown to be in possession of defendant No.2 Mohar Singh. As per Jamabandi for the year 1980-81, possession of the plaintiffs has been shown on the land to the extent of 7 kanals 8 marlas. Possession of the Jiu has been shown to the extent of 10 kanals and the remaining land measuring 9 kanals 8 marlas has been shown to be in possession of Mohar Singh-defendant No.2. Admittedly land is shamilat deh, therefore, none of the parties claimed ownership thereto. Dispute is only with regard for possessory title. The trial Court also referred to the evidence of the defendant in the context of Exhibit-D 1 i.e. Jamabandi for the year 1949-50, wherein possession of the land in question has been shown to be with Moti as co-sharer. Defendant No.2 inherited possessory right from his father, Moti who was recorded to be in possession before consolidation. Similarly, in Jamabandi for the year 1953-54 (Exhibit D-2) the same factual position existed. In the Jamabandi for the year 1961-62 (Exhibit D-3), name of Moti as co-sharer was excluded and

the same error creped in subsequent Jamabandis up to 1970-71 also. However, necessary correction was made in the revenue record i.e. Jamabandi for the year 1975-76 (Exhibit D-6) and thereafter, in the Jamabandi for the year 1980-81 and in subsequent Jamabandis, the factual position as depicted above to the extent of showing land to be in possession of plaintiffs, Jiu and Mohar Singh has been shown.

[6] Trial Court as a matter of fact, found under issue No.1 that the plaintiffs are not in exclusive possession of the entire property but they are proved to be in possession of khasra No.29/7 (7 kanal 8 marlas). By virtue of admitted written statement filed by defendants No. 1 (a) to 1 (c), possession over the khasra No. 29/8 (8-0) and khasra No. 29/13/1 (2-0) would also be that of plaintiffs. Defendant No.2 has been found to be in possession of khasra No. 29/13/1 (2-0) and 29/14 (7-8), totalling 9 kanals 8 marlas. In view of aforesaid, trial Court partly decreed the suit in favour of the plaintiffs, except the land measuring 9 kanals 8 marlas which was found to be in possession of defendant No.2.

[7] Feeling aggrieved, against the judgment and decree of the trial Court, two appeals were filed. Civil Appeal No.119 of 1991 was filed by the plaintiffs against part decretal of the suit. Second Appeal i.e. Civil Appeal No.121 of 1991 was filed by defendant No. 1 (a) to 1 (c) against the decree of the trial Court decreeing the suit of the plaintiffs qua their share on the basis of their admitted written statement. Lower Appellate Court on the basis of entries in the revenue record found as a matter of fact that in Exhibit D-1 i.e. Jamabandi for the year 1949-50, land has been shown to be shamilat deh and was in possession of one

Moti as co-sharer in subsequent Jamabandi Exhibit D-2 (1953-54) and the same position existed. In Jamabandi for the year 1961-62 Exhibit D-3 name of the plaintiffs came in the column of possession as gair morusi on the entire land measuring 26 kanal 16 marlas. This position continue up to Jamabandi 1970-71 and thereafter, the error was rectified in the Jamabandi for the year 1975-76 and thereafter, onwards, possession of plaintiffs was shown to be over khasra no.29/7 (7 kanals 8 marlas), possession of Jiu over khasra No.29/8 and 13/1 measuring 10 kanals and possession of Mohar Singh over khasra No.29/13/1 min 14 totalling 9 kanal 8 marlas was shown. Factually, the Lower Appellate Court concided with the observation of the trial Court, but found that land mutated in favour of plaintiffs was of 1/4 th share as per the Jamabandi after the year 1980-81 which are Exhibits D-7 and D-9. On record the correction has been made on the basis of mutation Exhibit D-10 and D-11. No basis for recording and sanctioning these mutation have come- forth on record and ultimately Lower Appellate Court found that parties are entitled equally to the extent of 8 kanals 12 marlas each. With this modification issue No.1 was decided. Other issues were not pressed by the parties during the course of arguments and therefore, the entitlement of the parties vis-a-vis each other was accordingly decided.

[8] In the second Civil Appeal No.121of 1991 filed by Om Parkash and other i.e. legal heirs of Jiu, Lower Appellate Court found that an admission in the form of written statement was not withdrawn by the defendants No.1 (a) to 1 (c). The stand taken by the appellants therein was that they did not file any written statement, admitting the claim of the plaintiffs. Their thumb impressions appearing on the written statements and Vakalatnama were claimed to be blurred

and were not capable of being identified. Since, Om Parkash, Smt. Ram Murti and Smt. Sarwan have not been examined to prove that they had not filed any written statement of admission of the claim of the plaintiffs, therefore, Lower Appellate Court did not find favour with their contentions. The Lower Appellate Court declined to entertain the claim of defendants No.1 (a) to 1 (c) in appeal vide judgment and decree of the even date.

[9] That is how the aforesaid two appeals came to be filed before this Court. In RSA No.1155 of 1992, substantial questions of law have not been formulated. However, in RSA No.1294 of 1992, following substantial questions of law have been placed on record for consideration of the Court:-

1. Whether in the facts and circumstance of the case, defendants were well entitled to file the written statement, contesting the suit of the plaintiffs?
2. Whether the alleged written statement not signed by the counsel for the defendants could be taken into consideration while conclusively determining the rights of the parties to the lease?
3. Whether the judgments and decrees passed by the Courts below, thereby partly decreeing the suit filed by the plaintiffs are sustainable in the eyes of law being based on misreading and non-reading of both oral as well as documentary evidence?

[10] I have considered the submissions made by both the sides. Following questions also arises for determination of rights of the parties:-

1. Whether if preparation of Jamabandi, Revenue Officers are competent to correct earlier existing entries in the revenue record in violation of Section of 36 of the Punjab Land Revenue Act?

2. Whether correction on the basis of mutation Exhibit D-10 and D-11 would suffice to serve the purpose by presuming the plaintiff to be not in possession of land, in view of long existing entries in Jamabandis.

[11] Apparently from Jamabandis for the year 1949-50 up to the year 1960-61, Moti father of defendant No.2 was shown to be in possession and from 1960-61 onwards, up to 1975 plaintiffs were exclusively shown in possession of the entire land. By virtue of correction in Jamabandi for the year 1975-76 (Exhibit D-6), separate position has been depicted in the revenue record and this position continued even after Jamabandi for the year 1980-81. Lower Appellate Court has equitably granted entitlement to the extent of 8 kanals 12 marlas in favour of each of the party, thereby making good of deficiency on realistic basis. In view of judgment rendered by Lower Appellate Court, equitable distribution of land based on revenue record since 1949-50 has been made in favour of the parties. Since, in view of admitted written statement filed by defendants No.1 (a) to 1 (c) two units of each 8 kanals 12 marlas has to come in favour of the plaintiffs. There is no RSA filed by Mohar Singh. Only appeal has been filed by the plaintiffs as well as heirs of Jiu i.e. defendants No.1 (a) to 1 (c) . In the appeal filed by defendants No.1 (a) to 1 (c) , this Court found as a matter of fact i.e the filing of admitted written statement has not been denied by the defendants No.1 (a) to 1 (c) by appearing in the Court nor the admission made in the pleadings has been withdrawn by them at any stage. In view of aforesaid, the appeal was dismissed by the Lower Appellate Court. A reference is also made in RSA No. 1294 of 1992, to the order dated 04.04.1992, dismissing the plea of amendment in the written statement. The said order was never assailed by the defendants

No.1 (a) to 1 (c). Even in the appeal filed before the Lower Appellate Court, there was no challenge made to the order declining to amend the written statement. Lower Appellate Court in Para No.7 of the judgment recorded the following facts:-

“The submission made by the learned counsel for the appellant is that when the appellants did not file any written statement admitting the suit claim of the plaintiffs, then they be given an opportunity to file the written statement afresh contesting the suit of the plaintiffs and to determine the rights of the parties while deciding the suit but no opportunity was given to the appellants. Thereafter, he filed an application seeking such opportunity but the same was dismissed by the learned trial court vide its order dated 04.04.1991 but not appeal has been filed against the said order of the learned trial court.”

[12] Questions as framed in RSA No.1294 of 1992 can be appreciated in the light of aforesaid facts. Admitted written statement was filed on record. Defendants allowed the trial Court to pass decree on the basis thereof, even at one point of time an application was moved for amendment of the written statement but that was declined. No effort was made to assail that order in any manner. Even in the First Appellate Court, the plea has been negated in the manner as shown in Para No.7 of the judgment as reproduced in preceding part of the judgment. Admission in pleading cannot be withdrawn in the manner as suggested now. Written statement allegedly not signed by the counsel for the defendants could be taken into consideration particularly when counsel as well as the parties did not raise any objection at the subsequent stage except a solitary effort for amendment of the written statement which was declined by the Court and thereafter, the said order was never assailed even before the Lower Appellate

Court. In view of aforesaid, at this stage it is too late to re-open the concluded issue and therefore questions No.1 and 2 are to be negated. Question No.3 is not the result of any misleading of evidence. This question has to be considered along with additional substantial questions as framed by this Court. Apparently, the land was shown to be with one Moti from 1949-50 onwards till 1960-61. In 1960-61 plaintiffs came in exclusive possession of the entire land. In subsequent Jamabandi for the year 1975-76 error was rectified. All the three parties were shown to be in their respective possessions. The correction as depicted in the revenue record by virtue of mutation Exhibit D-10 and D-11 are not forthcoming. It is a settled principle of law that after preparation of Jamabandi, Revenue officials have no jurisdiction to correct Jamabandi or revenue entries prior to the period incorporated in the Jamabandi. Since the written statement filed by defendants No.1 (a) to 1 (c) has to be co-related with the revenue record in which plaintiffs were found to be in possession and the same was diluted to the extent of claim of defendant No.2 as he was not party to the proceedings under Section 7 of the Village Common Land Act and his father Moti was shown to be in possession as co-sharer from 1949-50. Therefore, in the light of cumulative effect of these orders it can be found that there is no misreading of evidence on record. The additional questions as framed by this Court are to be answered as after preparation of Jamabandi Revenue officials have no jurisdiction to correct the pre-existing entries prior to preparation of Jamabandi and therefore, even after clear demarcation as made by the Lower Appellate Court to the extent of earmarking 8 kanals 12 marlas of land in favour of each of the party, still the plaintiffs would get two shares out of the total land, on the basis of consenting

written statement filed by the defendants No.1 (a) to 1 (c). Since defendant No.2 has not come forward by way of any appeal, therefore, the appeal filed by the plaintiffs i.e. RSA No.1155 of 1992 has to be accepted to the extent of 17 kanals 4 marlas.

[13] In the light of aforesaid *RSA No. 1155 of 1992, Hardyal and others Vs. Jiu and another* is accepted.

[14] In view of aforesaid discussion, *RSA No.1294 of 1992, Om Parkash and others Vs. Hardyal and others*, is rejected.

September 18, 2015
vanita

(RAJ MOHAN SINGH)
JUDGE