328

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2066 of 1989 (O&M)
Date of Decision: 11.02.2015

Khani Devi ......Appellant

Vs

Sher Chand .....Respondent

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

Present: Ms. Kiran Bala Jain,, Advocate
for the appellant.

None for the respondent.

****

1. ***Whether Reporters of 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?***

RAJ MOHAN SINGH, J.

[1]. Instant Regular Second Appeal was filed under Section 41 of the Punjab Courts Act. In view of Full Bench judgment of this Court in ***Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I*** framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clause (a) to (c) of Section 100(i) CPC. Now second appeal requires substantial question of law to be framed and thereafter inference can be made, because inference cannot be made only because the order is

contrary to law, but when the disputed issues raise a substantial question of law limiting such a power in the Appellate Authority based on public policy having roots in the maxim of "*interest reipublicae ut sit finis litium*".

[2]. Adhering to the aforesaid requirement, this Court considers that following substantial questions of law can be formulated in this regular second appeal for consideration:-

1. Whether correction of khasra girdawari by the Revenue Officer is worth acceptance when the civil Court is seized of the matter, particularly when filing of suit takes place after notice issued by the Revenue Officer and appearance of the plaintiff therein?

2. Whether relief of permanent injunction is an equitable and discretionary relief which can be denied in case plaintiff is proved to have not come to the Court with clean hands?

[3]. Defendant/appellant is in second appeal against the judgment and decree dated 04.08.1989 whereby Lower Appellate Court accepted the appeal of plaintiff/respondent against the judgment and decree dated 08.03.1989 passed by the trial Court and decreed the suit in appeal.

[4]. Plaintiff/respondent filed suit for permanent injunction against the defendant/appellant in respect of land comprised in

Rect.14// Killa No.20 Min (4-0) situated in the revenue estate of village Kapurgarh, Tehsil Amloh, District Patiala.

[5]. Defendant contested the suit on the ground that the plaintiff was not in possession of the suit land, rather defendant claimed herself to be in possession of the suit land for many years. The defendant pleaded that the khasra girdawaris in the name of plaintiff were corrected by the Assistant Collector, IInd Grade, Amloh, vide order dated 09.12.1987 after spot inspection, therefore, suit was not maintainable.

[5]. On the basis of pleadings of the parties, trial Court framed the following issues:-

> *"1. Whether the suit is not maintainable? OPD.*
>
> *2. Whether the plaintiff has no cause of action? OPP.*
>
> *3. Whether the plaintiff is entitled to permanent injunction prayed for? OPP.*
>
> *4. Relief."*

[6]. Plaintiff got examined himself as PW-1 and adduced documentary evidence in the form of khasra girdawaris Ex.P-1, P-3, P-4 and copy of jamabandi Ex.P-2. In defence, the defendant got examined herself as DW-1 and got exhibited copy of order dated 09.12.1987 passed by Assistant Collector, IInd Grade, Amloh, as Ex.D-1.

[7]. Trial Court took issues No.1 and 3 jointly and held issue

No.1 in favour of defendant and issue No.3 was held against the plaintiff. Under issue No.2 it was held by the trial Court that plaintiff had no cause of action and ultimately the suit was dismissed vide judgment and decree dated 08.03.1989. Lower Appellate Court in appeal filed by the plaintiff accepted the appeal on the premise that plaintiff instituted the suit on 23.11.1987 whereas defendant filed the application for correction of khasra girdawari on 10.11.1987. The order passed by the A.C. IInd Grade on 09.12.1987 came during the pendency of the suit and in view of this, Appellate Court held that no value can be given to the correction of khasra girdawari by the Assistant Collector, IInd Grade, particularly when the civil Court was seized of the matter. Appellate Court was of the opinion that jamabandi and khasra girdawaris entries should be given preference over the order passed by the Assistant Collector during the pendency of the suit in which question of possession was involved. With this proposition, Lower Appellate Court accepted the appeal and decreed the suit in appeal.

[8]. I have considered the arguments raised by the appellant/defendant and have considered the material on record carefully.

[9]. Learned counsel for the appellant/defendant has vehemently argued that there were wrong entries in the khasra girdawari in the name of the plaintiff which were lawfully corrected by the Assistant Collector, IInd Grade vide order dated 09.12.1987.

Correction of revenue record/khasra girdawari was exclusively under the domain of the Revenue Officer which was done by the him in discharge of his public/official duty. The order passed by the Assisant Collector, IInd Grade was upheld right upto Deputy Commissioner. Further the perusal of Ex.D-1 i.e. order dated 09.12.1987 passed by Assistant Collector, IInd Grade revealed that a due notice was issued to the plaintiff who had even appeared before the Revenue Officer. Copy of the application was supplied to the plaintiff and when the Assistant Collector, IInd Grade inspected the spot then plaintiff opted not to appear before him. After appearance before the said Collector and having notice of the correction proceedings, the plaintiff ventured to file a civil suit without disclosing the factum of filing of application for correction of khasra girdawari and his appearance therein. The concealment made by plaintiff was writ large on the face of the record.

[10]. The Revenue Officer corrected the khasra girdawari entries *Kharif* 1985 to *Kharif* 1987 in the name of the defendant/appellant after following appropriate procedure of spot inspection. The Revenue Officer was having exclusive jurisdiction and competence to effect the change in the khasra girdawari and even if the civil Court was seized of the matter, that had no adverse effect on the proceedings before the Revenue Officer.

[11]. The entries in the Khasra Girdawaris were of total land of Killa No.20 i.e. 8 Kanals, out of which 4 Kanals were in possession

of the plaintiff/respondent and remaining 4 Kanal were in the possession of the defendant/appellant. The plaintiff/respondent under the garb of said entry of 4 Kanals wanted to injunct the defendant/appellant by way of suit for permanent injunction with an intention to usurp the land which was in possession of the defendant/appellant. He sought to project sowing of burseen crop on the suit land, but no revenue document was produced to establish that burseen crop was sown by the him on the suit land. The plaintiff/respondent had averred in the suit that he was owner of the suit land whereas according to his statement the stand was found to be false when he himself deposed before the Court that Government was owner of the suit land and in the revenue record also the State Government was recorded to be in possession of the suit land. It was a dilemma how the plaintiff could claim ownership without any basis in view of his aforesaid statement?

[12]. The cause of action as propounded by the plaintiff was proved to be farce. In order to plead cause of action he gave the recital in para No.6. The said plea was not evidenced by any material. His statement while appearing as PW-1 was to the effect that about one year ago, the defendant had advanced a threat to dispossess him. This fact was, however, not even pleaded in the plaint and no suggestion was given to the defendant that the defendant had ever tried to dispossess him forcibly from the suit land.

[13]. Trial Court rightly rejected the claim of the plaintiff while dismissing the suit. As a matter of fact, it was found that the correction proceedings of khasra girdawaris were lodged on 10.11.1987, whereupon a lawful notice was given to the plaintiff/respondent by the Assistant Collector, IInd Grade. After due service plaintiff/respondent even appeared before the Revenue Officer and when spot inspection was to be undertaken by the Revenue Officer, he absented himself. During the period of interregnum, plaintiff ventured to file suit for permanent injunction. Pleading of this fact was conspicuously missing from the plaint as the same was conveniently concealed by the plaintiff/respondent with no obvious reasons. The plaintiff/respondent was found to have concealed the material facts and did not come to the Court with clean hands. Now the substantial question arises whether the correction of khasra girdawari was lawfully done by the Revenue Officer which was lodged prior in point of time then the filing of the suit?

Plaintiff/respondent despite appearance before the Revenue Officer did not disclose the factum of filing of correction proceedings in the plaint. In view of these patent facts on record the correction of khasra girdawari as ordered by the Revenue Officer should be given precedence irrespective of the fact that the civil Court was seized of the matter. In this view of the matter substantial question of law No.1 is answered in favour of the defendant/appellant.

[14]. The relief of permanent injunction is an equitable/discretionary relief. Plaintiff/respondent is proved to have not come to the Court with clean hands as he concealed material facts from the Court. Factum of his appearance before the Revenue Officer in correction proceedings was conveniently concealed by him in the plaint and as such the relief claimed by him was not based on his bona fide claim. Since the relief is discretionary relief, therefore, it can be denied to the plaintiff/respondent who has not come to the Court with clean and pious mind.

In view of this substantial question of law No.2 is also answered in favour of the defendant/appellant and against the plaintiff/respondent.

[15]. In the correction proceedings before the Revenue Officer, the possession of the defendant/appellant was duly supported by as many as 21 persons of the village. The plaintiff/respondent opted not to appear before the Assistant Collector, IInd Grade at the time of inspection despite due notice to him. Since the correction of khasra girdawari was in the exclusive domain of the Revenue Officer who performed the duty of public servant in discharge of his official duty. The proceedings undertaken by the Revenue Officer were not be judged as without jurisdiction even if the trial Court was seized of the matter as those proceedings were independent in nature and were not swayed away on account of pendency of suit. Due weightage

should have been given to such proceedings which were done in discharge of official/public duty by a public servant. In view of this the presumption attached to earlier khasra girdawaris entries should be rebutted by the later khasra girdwaris entries. On this aspect reliance can be placed on a judgment ***1969 Current Law Journal page 163.***

[16]. According to jamabandi for the year 1984-85 Plaintiff/respondent-Sher Chand was recorded in possession of land comprised in Rect.14// Killa No.20 Min (4-0). He was recorded in possession of this land in khasra girdawari for the period of *Kharif* 1985 onwards. Balaki Ram was shown in possession of Rect.14 Killa No.20 Min (4 Kanals), who was husband of the defendant/appellant. Plaintiff was shown in possession of land bearing 14 Kanals and the land comprised in Rect.14, Killa No.20 Min was shown to be owned by the Provincial Government in the revenue record. The defendant/appellant was proved to be in possession of 4 Kanals of land and had no say qua remaining 4 Kanals of land.

[17]. Since the presumption of truth attached to the jamabandi entries and there was no such presumption attached to the khasra girdawaris but at the same time some weightage should have been given to the khasra girdawaris which were prepared by the public servant in discharge of his official duty. Since the possession of the defendant/appellant was found by the Assistant Collector, IInd Grade on the spot, therefore, in the light of conduct of the plaintiff/respondent in not disclosing the factum of correction proceedings before the civil Court, the correction proceedings should

have been given precedence over the pendency of the civil suit.

[18]. Lower Appellate Court was only swayed away with the alleged factum of order dated 09.12.1987 passed by the Assistant Collector, IInd Grade having come into existence during the pendency of the suit. Thus, the Lower Appellate Court has ignored the factum of concealment done by the plaintiff/respondent by not pleading the pendency of khasra girdawari proceedings at the time of filing of the suit despite his appearance before the Revenue Officer. Having failed to do so plaintiff/respondent, was not entitled to any discretion much less discretionary relief in the form of decree of permanent injunction.

[19]. Resultantly impugned order dated 04.08.1989 passed by the Additional District Judge, Patiala is set aside. Appeal is allowed and the judgment and decree dated 08.03.1989 passed by Sub-Judge, Amloh is restored. Suit of the plaintiff/respondent is ordered to be dismissed with costs throughout.

February 11, 2015 **(RAJ MOHAN SINGH)**
Atik **JUDGE**