

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

**RSA No.1879 of 1991
Date of Decision: 11.09.2015**

Haryana State through Collector

....Appellant

Vs

Gurbax Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Siddharth Sanwaria, D.A.G., Haryana
for the appellant.

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]. Defendant No.1 through defendant No.2 has filed this regular second appeal against the judgment and decree dated 01.05.1991 passed by Additional District Judge, Hisar vide which judgment and decree dated 17.03.1990 passed by Sub-Judge IInd Class, Hisar has been affirmed.

[2]. Plaintiff-Gurbax Singh filed a suit for prohibitory as well as mandatory injunction, seeking to restrain the defendants from effecting recoveries of *Abiana* from him by way of adopting coercive method.

[3]. Plaintiff alleged that he was Lambardar of village and in the capacity of Lambardar, he recovered Abiana/land revenue for *Kharif*

1982, *Rabi* 1983, *Kharif* 1983 *Rabi* 1984 and *Kharif* 1985. Whatever he collected already stood deposited with the Government. Since all the villagers did not pay the land revenue, so he prepared a list of defaulters and sent the same to defendant No.2/Tehsildar for necessary action. No action was taken by the Tehsildar. Having fed up with the defaulters, he left the job of Lambardar. Plaintiff further alleged that he visited the office of Tehsildar many a times along with list of defaulters and narrated the whole events, but Tehsildar did not take any action, rather he warned the plaintiff to deposit the whole of the land revenue of the village, otherwise the same would be recovered from him by way of arrest and detention.

[4]. Plaintiff alleged that whatever was recovered by him, already stood deposited with the Government. The defendants wanted to recover an amount of Rs.29,000/- from the plaintiff illegally and forcibly. The threat of arrest and detention, prompted the plaintiff to file suit for prohibitory and mandatory injunction.

[5]. Defendants contested the suit by taking all customary pleas. Submission of list of defaulters to the Tehsildar by the plaintiff was denied, rather it was claimed that the plaintiff did not recover the land revenue since *Kharif* 1985. But an amount of Rs.33513.27 was statedly pending towards the plaintiff for the period *Kharif* 1982 to *Kharif* 1985 i.e. the period during which he recovered the amount from the villagers, but did not deposit the same with the Treasury. A notice was served upon the plaintiff on 31.03.1986, requiring him to

deposit the aforesaid amount. Failure on the part of the plaintiff resulted in issuance of another notice dated 08.06.1986.

[6]. Defendants further alleged that warrant of arrest were issued against the plaintiff under Section 69 of the Punjab Land Revenue Act and he was arrested on 13.08.1987. One Joginder son of Dale Singh deposited an amount of Rs.5,000/- and got the plaintiff released on bail. He agreed to deposit Rs.28513.27 till 25.08.1987, but again he failed to deposit the same and again on 30.06.1989, he was arrested. This time Bichiter Singh deposited an amount of Rs.5,000/- and got him released on bail on the condition that he would deposit the whole of the amount in the Treasury. Plaintiff did not deposit the remaining amount in Treasury.

[7]. After completion of pleadings, following issues were framed by the trial Court:-

- “1. *Whether the plaintiff entitled in the relief of injunction (prohibitory and mandatory) as prayed for?*
2. *Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
3. *Whether the plaintiff has a locus standi to file the present form? OPD*
4. *Whether the suit of the plaintiff is not maintainable on the ground that revenue record is being done under the Punjab Land Revenue Act and he has to deposit the Land Revenue under Section 78 of Land Revenue Act as required which plaintiff did*

not deposit?OPD

6. *Whether the civil court has no jurisdiction as this case comes under Section 58 (2 & 4) of Punjab Land & Revenue Act? OPD.*

7. *Relief.”*

[8]. Trial Court decreed the suit of the plaintiff vide order dated 17.03.1990 for prohibitory injunction. Relief qua mandatory injunction was declined. Since the liability of the plaintiff to deposit the amount could not be established by the defendants by way of any documentary or oral evidence, therefore, defendants were restrained from effecting recoveries from the plaintiff through means of imprisonment or by way of adopting coercive method except by filing a civil suit for recovery of the amount.

[9]. Defendants unsuccessfully availed remedy of first appeal before the lower appellate Court, who dismissed the appeal vide judgment and decree dated 01.05.1991.

[10]. I have heard arguments of learned counsel for the appellant and have also gone through the material on record.

[11]. Liability of the plaintiff has to be ascertained in the context of default within the meaning of Section 2(8) of the Punjab Land Revenue Act. The condition precedent for effecting recovery from the defaulter is that there should be a collection of land revenue by the Lambardar from the villagers. The collection must be established by means of cogent evidence. The defaulter cannot be presumed in terms of Section 2(8) of the Act, without there being any recovery

effected by the person from the villagers or the villagers had not facilitated recovery to the Headman/Lambardar who falls under the ambit of Section 2(8) of the Act.

[12]. The plaintiff while appearing as PW-1 has maintained that whatever land revenue was collected by him, the same was deposited with the Treasury. The lists of defaulters Ex.P1 to P9 were prepared by him and the same were handed over to Tehsildar. He admitted the demand raised by the Department and the amount paid on his behalf. Foga Singh PW-2 has also corroborated the testimony of the plaintiff to the effect that lists of defaulters were submitted by the plaintiff to the Tehsildar. Another witness Joginder PW-3 also testified the same in the context of preparation of lists of defaulters and submissions thereof in the office of Tehsildar.

[13]. On the other hand/appellant No.1 examined Mehar Singh DW-1 and Jagdish Chand, Patwari DW-2. The deposition of Mehar Singh was to the effect that the plaintiff failed to deposit *Abiana* collected by him from the villagers and a Patwari was deputed to make enquiry. The witness further stated that list of defaulters was submitted by Patwari after making inquiry and it was found that lists submitted by the plaintiff were wrong. The inquiry conducted by the Patwari revealed that the plaintiff had collected an amount of Rs.54/- from one Trilok Singh, who was also shown as one of the defaulters in the lists prepared by the plaintiff. In view of that, lists prepared by the plaintiff were claimed to be not genuine and it was asserted that

since the amount to the tune of Rs.5,000/- each on two occasions were deposited by the persons like Joginder Singh and Bichiter Singh, therefore, plaintiff cannot wriggle out of his liability to pay the amount of *Abiana* which he had collected from the villagers.

[14]. It can be noticed that the payment of Rs.5,000/- each on two occasions even if paid by the persons in order to get the plaintiff released cannot tantamount to admission of liability. The entire case of the defendants is based upon report of Patwari in which reference of one Trilok Singh has been given in order to assert that the lists of defaulters submitted by the plaintiff were wrong. DW-1, Patwari Mehar Singh while submitting the report gave an instance of Rs.54/- allegedly deposited by Trilok Singh and his name was found in the lists of defaulters. No evidence has been brought on record in the form of corroboration to the fact that Trilok Singh had infact handed over the amount of Rs.54/- to the plaintiff. Trilok Singh was not examined. The reliance was placed only on the report of Patwari without there being any corroborative piece of evidence.

[15]. Section 78 of Punjab Land Revenue Act is also not attracted in view of the fact that once the factum of recovery is not proved, question of depositing the amount in question for maintaining the suit does not arise.

[16]. No law point has been formulated for consideration of the Court, Still the Court considered the legal proposition in terms of Section 78 of the Punjab Land Revenue Act i.e. whether a suit can

be maintained even without depositing the arrears of land revenue?

[17]. The aforesaid question as poised before this Court has to be answered in negative. Under Section 78 of the Act it was the duty of the plaintiff-respondent to deposit the amount in Court before challenging the liability of demand made by the Department. Otherwise jurisdiction of civil Court could not have been invoked. In considered opinion of this Court the plea is not worth acceptance. Jurisdiction of civil Court under Section 9 CPC is dependent upon the legality of the demand in question. Since the factum of recovery by the plaintiff from the villagers has not proved, therefore, jurisdiction of civil Court can be invoked in the circumstances when the defendants acted illegally and without jurisdiction. Reference can be made in this context on **Gurbax Singh s/o Chanda Singh v. The Financial Commissioner & another, 1991 PLJ 190, AIR 1991 SC 435**

[18]. Trial Court rightly observed that so far as right of recovery of the defendants-Department is concerned that can be invoked only after establishing the factum of recovery by the plaintiff. The liberty was rightly given to the Department to seek recovery from the plaintiff after establishing the factum of collection made by the plaintiff from the villagers. Prohibitory injunction by adopting coercive means to recover such amount has been rightly held to be not permissible in law.

[19]. In view of aforesaid, this Court is of the considered view

that the defendants cannot recover the amount of alleged *Abiana* in the absence of any cogent evidence of collection made by the plaintiff from the villagers by means of adopting coercive method. Resultantly, this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

September 11, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE