

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

R.S.A.No.3499 of 2009 (O&M)

Date of Decision: October 12, 2015

Raghbir

...Appellant

Versus

Vikram Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Ajay Jain, Advocate,
for the appellant.

Mr.Rohiteshwar Singh, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-defendant is in Regular Second Appeal against the concurrent findings rendered by both the Courts below, whereby the suit of the respondent-plaintiffs seeking declaration that they are owners in possession in respect of 420th share in land measuring 209 kanals 5 marlas as per jamabandi for the year 1959-60 upto jamabandi 1973-74, has been decreed and the defendants have been enjoined from interfering into their cultivating possession in a land described in the plaint comprising Khewat No.309 measuring 209 kanals 5 marlas.

Mr.Ajay Jain, learned counsel appearing on behalf of the appellant-defendant submits that a suit bearing No.207 dated 23.8.1976 was filed by the proprietors of the Village in representative capacity by invoking the provisions of Order 1 Rule 8 CPC. The said suit was decreed vide judgment and decree dated 17.9.1976, Ex.P7 and Ex.P8, and as per the said judgment and decree, a proclamation was sent to the proprietors of the

Village, but no body raised any objection and as per the said judgment and decree, an entry vis-a-vis 28th share in the suit property was reflected in the name of the appellant-defendant, which was ultimately effected in the jamabandi for the year 1978-79. He further submits that both the Courts below have committed illegality and perversity in conferring the status of the respondent-plaintiffs as owners in possession, whereas the revenue record reveals that they are *Patedar Dwami* and, therefore, there has been a total misreading and misdirection. He further submits that as per mutation No.523, a mutual partition had taken place amongst the proprietors, but the same was not sanctioned and accordingly the suit, aforementioned, was filed and there is reference to the aforementioned mutation in the judgment and decree. The Lower Appellate Court, though noticed the contents of the decree, but thereafter completely deviated from the documents and formed a different opinion and, thus, there is illegality and perversity in the impugned judgments and decrees, much less, following substantial questions of law arise for determination by this Court:-

- 1) Whether the suit filed by the plaintiffs was itself legally maintainable?
- 2) Whether the Judgments and Decree passed by the Courts below are liable to be set-aside being a result of complete misreading of documentary evidence available on record?

Mr.Rohiteshwar Singh, learned counsel appearing on behalf of the respondent-plaintiffs submits that the appellant-defendant has 105th share in the property and the decree was passed at the back of Fusal, the predecessor-in-interest of the plaintiffs and, therefore, the judgment and decree, Ex.P7 and Ex.P8 were not binding. He further submits that in the column of ownership, respondent-plaintiffs have been shown to be owners in possession and this entry continued upto 1959 to 1962 and 1973-74 and the same was only changed as per jamabandi for the year 1978-79 owing to the passing of the judgment and decree dated 17.9.1976. He further submits that there is no illegality and perversity in the impugned judgments and decrees, much less, no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book, much less, the records of the Courts below with their able assistance.

The Lower Appellate Court, being last Court of fact and law, is enjoined upon an obligation to determinate a point of determination as per the provisions of Order 41 Rule 31 CPC. The reasoning assigned by the Lower Appellate Court in dismissing the first appeal filed by the appellant-defendant reads thus:-

"I have also perused jamabandi Ex.P4 i.e. 1978-79 which shows that in the suit land of Khatoni No.333/331 Daula has been shown 28th share without any basis because the land of khatoni No.333/331 measuring 209 kanal 5 marlas (Ex.P3) is 420th share of Fusal. Therefore, in the land of Fusal measuring 209 kanals 05 marlas the share of Daula has shown 28th share is not based as per jamabandi for the year 1973-74 as claimed in the plaint on which basis the judgment Ex.P7 dated 17.09.1976 was passed. Now I am coming to the point whether the said judgment and decree is binding on the plaintiff or not. The said suit No.207 dated 23.08.1976 was filed by Hukam Chand against Matadeen a representative suit for declaration. In the said suit no notices were ever issued in the name of Fusal. Ex.P7 judgment dated 17.09.1976 showing that the plaintiffs themselves claimed that the suit property is joint property as per jamabandi for the year 1973-74 and the partition have been effected for their convenience. Therefore, as per jamabandi for the year 1973-74, they are owner in possession of the suit land and on the basis of admitted written statement the suit was decreed. But as per jamabandi for the year 1973-74 the plaintiff has been recorded as exclusive owner in possession of the land measuring 209 kanals 05 marlas i.e. 420 share in the total land in the jamabandi for the year 1978-79 the defendant Daula has been shown 28th share in the land of measuring 209 kanals 05 marlas which is not as

per jamabandi to 1973-74, it amounts to mis-representation of the fact before the Court at that time when the said judgment dated 17.09.1976 was passed even the same was not in the knowledge of the plaintiff. Therefore, I found that issues No.1 & 2 rightly decided by the learned Trial Court.”

On going through the aforementioned reasoning, I am of the view that the Lower Appellate Court has misdirected in referring the parties as owners in possession of the land measuring 209 kanals 5 marlas, i.e., 420th share in the total land in the jamabandi for the year 1978-79. In fact, the jamabandies, aforementioned, have been seen by this Court and as per the same, the respondent-plaintiffs are not shown as exclusive owners in possession, but as *Patedar Dwami*. Thus, in my view, there is illegality and perversity, much less, misreading of the documents and, therefore, I deem it appropriate to remand the matter back to the Lower Appellate Court to address the issue whether the judgment and decree dated 17.9.1976 was binding upon the respondent-plaintiffs, particularly in view of the fact that there is a categoric observation that the proclamation of the pendency of the suit was sent to all the proprietors and no objection had been filed thereto.

In view of what has been observed above, the questions of law, as noticed above, are answered in favour of the appellant-defendant and against the respondent-plaintiffs and the impugned judgment and decree of the Lower Appellate Court is set-aside and the matter is remitted back to the Lower Appellate Court to decide the controversy afresh in accordance with law, after taking into consideration each and every documents pragmatically.

The parties, through their counsel, are directed to appear before the Lower Appellate Court or successor Court on 16.11.2015.

The appeal is accordingly allowed.

Records of the Courts below be sent back forthwith.

October 12, 2015
ramesh

(AMIT RAWAL)
JUDGE