

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

102

RSA No. 1094 of 2011 (O&M)

Date of decision: 17.08.2015

Sarabjit Singh and others

...APPELLANTS

VS.

Tarlochan Singh and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P.N.Aggarwal, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Lower Appellate Court, vide which the suit of the plaintiff-appellant has been decreed partly on the ground that the entries in the revenue record were abruptly changed in the name of Rama for the year 1987 qua Khasra No. 32//5, whereby the appellants-plaintiffs were in joint possession of the land, which was earlier mentioned in Jamabandis for the years 1971-72 Ex. P-6, 1976-77 Ex. P-7 and Khasra Girdawari from 1983-84 to 1986-87, Ex. P-8.

Counsel for the appellants asserts that the learned Lower Appellate Court has, in para 20 of its judgment, mentioned that the entries prior to the year 1987 were showing the land to be suit land to be owned by Shamlat Tarf Hasabrasad Jar Khewat and the possession was “Makbuja Malkan”, which had an effect or showed that all the co-owners including the predecessors of the appellants-plaintiffs were in joint possession of the said

land. It is also asserted that since the Court has recorded that it was abruptly changed qua Khsara No. 32//5 in the name of Rama in the year 1987, the suit of the plaintiffs qua this khasra number should also have been accepted when it has been found that qua the similar entries in the revenue records made in favour of Babu Singh son of Telu in the year 1988 have been found without following the proper procedure as no notice was given to any of the co-sharers. He thus, contends that the entries in the year 1987 qua Khasra No. 32//5 have also been declared as not binding upon the other co-sharers which indicates that the possession is that of Rama in the year 1987. Accordingly, a prayer has been made for setting aside the said findings, whereby the appellant-plaintiff has been denied the decree for declaration with regard to the said entries and it has been held that Rama and his successors are in possession of Khasra No. 32//5 since the year 1987.

This contention of the counsel for the appellants cannot be accepted in the light of the fact that a suit was preferred by the respondents-defendants No. 1 to 5 qua injunction against the appellants-plaintiffs regarding the said land i.e. Khasra No. 32//5 (8-0), which was decreed by the trial Court vide judgment dated 10.09.2002 Ex. D-3 and Ex. D-3/A. On an appeal filed by the appellants-plaintiffs, the Appellate Court upheld the judgment and decree passed by the court below vide judgment and decree dated 12.02.2005 Ex. D-4 and Ex. D-4/A. No further challenge was posed to these judgments and decree, which have, therefore, attained finality. This clinches the issue with regard to the possession over the land comprising in Khasra No. 32//5 (8-0). The findings are clear with regard to the possession of the said land. The principle of *res judicata* has rightly been applied

against the appellants-plaintiffs and, therefore, they cannot be permitted to re-agitate the matter. It is apparent from the judgment that they have not been declared the exclusive owners of the land in question but have been shown to be in possession. The findings thus, recorded by the courts below in this regard cannot be faulted with.

Finding no merit in the present appeal, the same stands dismissed.

August 17, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE