

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

Regular Second Appeal No.1443 of 2011 (O&M)

Date of decision: 14.7.2015

Smt.Rama Bansal and others

... Appellants

Versus

Smt.Nirmal Jain and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

Yogdhyan Singh Bansal, the original plaintiff [since deceased] approached the civil court in a lawsuit for permanent injunction claiming that his father Chiranji Lal was a tenant over the suit land since Kharif 1972 and had acquired the status of a permanent and perpetual lessee vide two registered lease deeds dated 19th April, 1974 and 12th July, 1974 and came into possession of the suit corpus. It was his case that he remained in possession till Kharif, 1984 when the lease rights stood determined but his father continued in possession of the suit land till they were given to him in a family settlement. Chiranji Lal died on 21st January, 1985. Yogdhyan Singh Bansal died during the pendency of the suit and is represented in the litigation by his legal representatives. Even so, plaintiffs could not produce

in evidence the alleged family settlement on which his case rested but depended on an oral statement made by PW6 Ravi Bansal in his deposition who is none other than his son. There is even no specific averment or any material particulars set out in the plaint to show as to how and between whom the family settlement took place, forget about the absence of evidence to substantiate it. There was never even a reference to the family settlement in any of the case papers and appears to be a false assertion to unravel which the trial had unfortunately to proceed to reach its dead end in the void of space occupied by the length of the trial and the colossal waste of time spent.

2. The record of rights in revenue documents revealed Sajjan Kumar and Suraj Mukhi as the owners in possession of the suit land which was purchased by defendant # 1 vide two sale deeds dated 27th December, 1984 and 20th November, 1986. Defendant # 2 purchased the land from defendant # 1 vide sale deeds dated 2nd May, 2000 [Ex.D3] and 17th August, 2000 [Ex.D4].

3. Defendant # 2 contested the suit by asserting that he is the owner of suit property and protected by section 41 of the Transfer of Property Act, 1882 being a bona fide purchaser for valuable consideration without notice of the existence of the plaintiff or any encumbrance.

4. In the suit even the aforesaid sale deeds are not challenged but a plea only has been taken that recitals of delivery of possession in these sale deeds is wrongful and not binding on his rights as his father Chiranji Lal continued in possession of the suit land as lease holder during the period from 19th April, 1974 onwards. This fact is not corroborated by any

documentary evidence. The suit failed. As also the appeal.

5. The Court *a quo* records that the plaintiff even failed to establish that the lease deeds in favour of his father were ever acted upon by the parties. Defendant # 1 purchased the property in dispute on the strength of the entries in the revenue record [first sale] which sale deeds were never challenged by Chiranji Lal during his life time. The sale deeds in favour of defendant # 1 were not produced on record in the trial since the contesting party was defendant # 2 protecting his sale deeds. The suit was filed in the year 1999 and in the plaint it was pleaded Yogdhyan Singh Bansal that the entries in the Jamabandi for the year 1976-77 regarding possession of the suit were wrongly recorded when his father's name ought to have been mentioned. The suit was brought 14 years after the death of Chiranji Lal. The Court held that the lease deeds executed in favour of Chiranji Lal in the year 1974 were never acted upon. As a twist to the tale it chanced that Chiranji Lal was none other than the father of vendors Sajjan Kumar and Suraj Mukhi who sold land to defendant # 1.

6. The learned Additional District Judge Hisar in his judgment dated 11th December, 2010 arrived at the conclusion on the evidence that defendant # 1 Ram Lal Jain was a bona fide purchaser of the suit land entitled to protection under Section 41 of the Transfer of Property Act, 1882. If Ram Lal was the bona fide purchaser of corpus was also the subsequent purchaser defendant # 2. The sale deeds were executed by Sajjan Kumar as general power of attorney holder of Suraj Mukhi and there was nothing on record to show that the cancellation of General Power of Attorney executed by Suraj Mukhi in favour of Sajjan Kumar was kept

secret from Sajjan Kumar and therefore the vendee knew none of it. For these reasons, the appeal failed and the findings of the trial Court stand affirmed.

7. In view of this factual position, the court thought that a permanent injunction could not be issued against the defendants from forcibly dispossessing the plaintiff on the false notion of wrong entries in the revenue record with respect to possession having been delivered to third parties. The lower appellate court held the plaintiff was unable to establish by evidence of any right, title or interest over the suit land and is, thus, not entitled to the relief of permanent injunction. The plaintiff is also not entitled to claim correction in the revenue record as the claim by the time the suit was brought is stale by protracted delay and by inordinately long passage of time the rigour mortis of limitation had set in.

8. To make matters worse for the plaintiff/s, his/their own witness L.N.Babbar, the executor of the document Ex.P3 spoke against him/them when he denied in his deposition in the witness box any knowledge of the fact as to whether revocation of GPA was ever brought to the notice of the general power of attorney holder or defendant # 1-Ram Lal who had purchased the land from holder of GPA executed in favour of Sajjan Kumar by Suraj Mukhi. Rights of defendant # 2 would mature later in his sale deeds.

9. While canvassing on the point that the entries of delivery of possession in the sale deeds were wrongful and thus not binding on the rights of the plaintiff/s, Mr.Ajay Jain their learned counsel appearing for them in second appeal relies on a solitary judgment of the learned Single

Judge of this Court in **Jagpal Singh v. Pal Singh** reported in 1984 PLJ 38 wherein it has been observed in para. 2 as next follows: -

“2. In the Khasra Girdawaris for 1974-75, 1975-76 and 1976-77 the three disputed Khasras are shown in possession of Pal Singh, respondent. In the Jamabandi of year 1976-77 these Khasras numbers are shown in self occupation of the owners, i.e the appellants. For preparation of the Jamabandi in 1976-77 the entry made in the Khasra Girdawari in Rabi 1976 could not be ignored. In Rabi 1976 the three disputed Khasra numbers were in occupation of Pal Singh, respondent. Entry made in Jamabandi of 1976-77 regarding the cultivation of the land by the owners is obviously wrong and no reliance can be placed thereon.”

10. It is trite to say that Jamabandies are by themselves not sufficient to establish title and other land rights by themselves or that the Jamabandies are as sacred as the gospel truth but yet right, title and interest in land has to be established by best evidence. In cases where Jamabandies declare rights the adjudication of disputes would indeed depend on the facts of each case and from case to case. One fact here or there can tilt the balance. The distinguishing feature in *Jagpal Singh* case is that it dealt with the issue of Jamabandies in the light of the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 in a case of eviction of an unauthorized occupant of public land with special reference to Sections 7 and 9 of the Act. I fail to see how this case helps the appellants in any manner.

11. When the courts below hold after appreciating the evidence on record and in fact the lack of it that the lease deeds dated 19th April, 1974 and 12th July, 1974 were never acted upon then they were still born. What impelled the making of the lifeless lease deeds remains a mystery personal

to its makers and this is even more confounded by late Chiranji Lal transiting from tenant to leaseholder in perpetuity and then owner by a family settlement, the existence of which lies buried in a grave far from the land in dispute. The rights of defendant # 2 as a person protected by section 41 of the 1882 Act are very precious and cannot be touched even by a bargepole in the hands of the plaintiffs. This is not a case for interference at all. Neither a question of law nor a whisper of a substantial one is involved in this appeal against the appellate decree.

12. For the foregoing reasons, I find lack of merit in this appeal worth admission. It is ordered to stand dismissed for the reasons recorded above.

(RAJIV NARAIN RAINA)
JUDGE

July 14, 2015
Paritosh Kumar