

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

RSA No.2587 of 2011(O&M)
Date of decision: 06.01.2015

Mohinder Singh

...Appellant

Versus

Baru and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ashok Giri, Advocate 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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 31.01.2009. Appeal preferred against the said decree failed and was dismissed on 28.02.2011. This is how, plaintiff is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a declaration that he was in occupation and possession of the suit land in the capacity of gair marusi tenant and was thus, entitled to have the entries recorded as such in the record of rights or restoring the earlier entries. By way of consequential relief, a decree for injunction was claimed, restraining the defendants from causing interference in his possession. It was averred that plaintiff has been in continuous possession of the

suit land measuring 9 kanals 11 marlas for the last more than 25 years from the time of his ancestors. His father Kanshi Ram was also recorded as tenant in the suit property. Though, plaintiff never given up his possession over the suit land, but on account of lapse on the part of the revenue officials, his name was removed from the revenue record. That being so, defendants threatened to take forcible possession of the suit land, though they had no right, title or interest in the suit property. Further, in the year 1977, plaintiff and his father had filed suit No.50 of 1977 qua the suit land against Ram Chand and Mirchoo. One Kiroo and his father had also filed a suit against the plaintiff and his father. And another suit was filed by Ram Chand and Mirchoo against the plaintiff and his father. All the three suits were consolidated and decided vide a common judgment dated 28.11.1978, and it was held that plaintiff was in possession of the suit land as a tenant through his father. Resultantly, plaintiff continued to be in possession of the suit property as tenant and was never evicted therefrom. Thus, the position as it existed earlier in the record of rights was required to be restored, showing plaintiff as tenant over a land measuring 9 kanals 11 marlas.

In defence, it was pleaded, inter alia, that Kanshi Ram i.e. father of the plaintiff, along with Jewan and Kishan Singh were joint owners in possession of the suit land. Post death of Jewan, land qua his 1/3rd share was inherited by his

legal heirs i.e. defendants No.1 to 5. Likewise, on the death of Kishan Singh, his 1/3rd share was inherited by defendants No.6 to 9, being his legal heirs. Similarly, subsequent to the death of Kanshi Ram, his 1/3rd share in the suit land was inherited by the plaintiff and defendants No.10 & 11, pursuant to a registered will dated 30.07.1996, and mutation No.1814 was sanctioned in their favour. Accordingly, it was maintained that defendants No.1 to 9 were joint owners/co-sharers to the extent of 2/3rd share in the suit land, as per the jamabandi for the year 1998-1999. And plaintiff along with defendants No.10 & 11 were joint owners/co-sharers of 1/3rd share and the said position was duly reflected in the record of rights. It was denied that plaintiff was ever in possession and occupation of the suit land as tenant. Earlier entries made in the revenue record, showing plaintiff as tenant, were purported to be wrong, illegal and fake. Further, the judgment and decree dated 28.11.1978, was alleged to be not binding on the defendants, as they were not parties to the said proceedings.

Courts below, on an analysis of the matter in issue and evidence on record, found that the judgment and decree dated 28.11.1978 (Ex.P5) was rendered in a suit filed by the plaintiff and his father against Ram Chand, Mirchoo and Kiroo Ram, seeking a decree for injunction simpliciter. No doubt, it was observed that the revenue record showed plaintiff as gair marusi through his father Kanshi Ram in the suit land. But

since no such declaration was being claimed in the said suit, suit being for injunction simpliciter, and defendants being not a party thereto, it was observed that the findings recorded therein would not bind the defendants in the present proceedings. Further, jamabandi for the year 1998-99 (Ex.P2) showed that Jewan, Kanshi and Kishan Singh sons of Nadia were recorded as owners in possession of the suit land. Ex.P2 further revealed that mutations qua their respective shares were sanctioned in favour of their heirs. Jamabandi for the year 1988-89 (Ex.P8) showed that the suit property between Jewan, Kanshi and Kishan Singh sons of Nadia Singh was mutually partitioned and a mutation in this regard was accordingly entered at No.1686, which was duly sanctioned by the revenue authorities. Accordingly, name of the plaintiff was removed from the column of cultivation. Thus, jamabandies for the years 1993-94 & 1998-99 (Ex.P9 & P2) do not show plaintiff to be in possession of the suit property as tenant gair marusi. Accordingly, it was observed that once the suit land stood partitioned, name of the plaintiff was deleted from the column of cultivation. And as observed by the first appellate court that such like entries of tenant at Will are made with a purpose to show specific possession of one of the co-sharers over a specific portion of a joint land. Though, generally there is no payment of rent in such cases. Thus, such entries carry relevance only till the time the land is partitioned between the

co-sharers. Since the suit land was partitioned between the co-sharers and all the co-sharers were shown to be the exclusive owners in possession of their respective shares, entries, if any, prior thereto showing plaintiff to be a tenant lost their significance. Even otherwise, it was observed that entry of “gair marusi tenant” in the earlier jamabandies, were wholly misleading. If, Kanshi Ram was a tenant at Will then Mohinder Singh during his lifetime became his sub-tenant, which in law could not be possible, as there cannot be sub-tenant of a tenant at Will. The position, reflected in the record of rights post partition, completely rebutted the entries that were earlier recorded showing plaintiff to be a tenant. So much so, Mohinder Singh (PW3) testified in his cross-examination that the suit land was ancestral property and was owned by his father and his brother to the extent of 1/3rd shares each. He further admitted that post death of his father and uncles, their respective shares were inherited by their LRs. In support of his claim, plaintiff had claimed that he had been paying rent to the owners amounting to ₹ 500/- to ₹ 700/-, but no evidence, least cogent, was brought on record to substantiate any such claim. Further, jamabandies for the years 1973-74 (Ex.P7), 1983-84 (Ex.P4) and 1988-89 (Ex.P8) showed possession of the plaintiff in the column of tenancy. And column No.9 reflects “Jumgi-gair-marusi, lagan-nadarad ba-waja pishar-khud” meaning thereby that no rent was being

paid by the plaintiff to the owner/landlord. As Kanshi Ram (co-owner) was none other than the father of the plaintiff. Suit filed by the plaintiff was also held to be barred by time, as concededly he acquired knowledge as regards these entries in the year 1989, and the present suit was filed after 13 years on 26.07.2002. Accordingly, the suit and thereafter the appeal filed by the plaintiff was dismissed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument has been advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Concededly, the suit land measuring 9 Kanals 11 Marlas was owned by father of the plaintiff, namely, Kanshi Ram and his two brothers. Jamabandi for the year 1988-89 shows that the suit property was partitioned between Kanshi Ram and his brothers and mutation No.1686 in this regard was duly sanctioned. And consequently, name of the plaintiff was deleted from the column of cultivation. As observed by the first appellate court, such like entries showing a person as tenant

at Will are made only with a purpose to show specific possession of one of the co-sharer over a specific portion of an un-partitioned land and are relevant till a joint khata is partitioned. Thus, the movement the suit property stood partitioned between the co-sharers, the entry showing plaintiff to be the tenant gair marusi was accordingly deleted. The position, which completely rebut the entries that were earlier recorded showing plaintiff to be a tenant. That being so, post partition of the suit property, the jamabandies for the years 1993-94, 1998-99 (Ex.P9 & Ex.P2) do not even remotely show plaintiff to be in possession of the suit property as tenant gair marusi. The said position in the record of rights was never questioned by the plaintiff till the filing of the suit in the year 2002. Though, plaintiff claimed himself to be a gair marusi tenant over the suit land, but he failed to produce any cogent evidence in this regard. He claimed to have been paying rent to the owners @ ₹ 500/- to ₹ 700/-, but no document or a rent receipt to substantiate such a plea was ever brought on record. In so far as the judgment and decree dated 28.11.1978 (Ex.P5 & Ex.P6), the same was rendered in a suit for injunction simpliciter and defendants were not party to the said lis. Needless to assert the said judgment and decree was not a judgment in rem. Learned counsel for the appellant could not show or point out as to how the conclusions that have concurrently been recorded by both the courts below

were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as sketched out above, and the conclusions that have concurrently been recorded by both the courts below, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

January 6 , 2015
Rajan

(Arun Palli)
Judge