

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

Regular Second Appeal No.1055 of 2012 (O&M)
Date of decision: 10.08.2015

Harnam Singh

... Appellant

versus

Amarjit Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. G.L. Bajaj, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The suit for injunction was brought by the plaintiffs on a plea that they are entered as gair marusi in the revenue records and they have been in possession in the properties. The injunction relief was resisted by the defendants making reference to the property as having been declared as surplus by the State in the hands of one Balbir Singh and the property treated as surplus had been allotted to him on 24.07.1963. It would appear that there were parallel proceedings between the original landowners and the defendant in which the defendant was able to ward off any action challenging the allotment in his favour.

2. Irrespective of the proceedings before the revenue officials, the plaintiff's claim for injunction was sought to be supported by reference to the copies of jamabandi for the year 1979-80 to 1999-2000, that is, still before the institution of the suit in 2003 as well as copies of girdawaris PW1/8 to show that the name of plaintiff's father Mohinder Singh had been entered and shown to be in possession. There was literally therefore a requirement of having to consider not the ownership in relation to the property but the person who was in actual possession. The trial Court held that apart from the documents making the allotment of the property, there was nothing to show that the defendant was in possession and the trial Court decreed the suit. In appeal by the defendant, the court observed that based on the letter of allotment by the State, the defendant could be taken as in possession for the year 1966 but after the said period, there was nothing to show that the defendant was in possession. It observed that the revenue entries bare important evidentiary value of possession and confirmed the decision of the trial Court.

3. The learned counsel for the appellant wants to project a proposition that the defendant's possession was granted by the State and the plaintiffs have no locus standi to file the suit. According to the counsel for the appellant, if the appellate Court was holding that the defendant was in possession for the year 1966, the plaintiff

ought to explain how they came into possession. I would find no such need for exercise of judicial scrutiny when the suit was only for the bare relief of injunction claimed by the plaintiff as gair marusi and would place reliance on the revenue entries for well off 20 years prior to the institution of the suit. If the two courts have held that the plaintiff had established the possession and the defendant document at best brings to proof only his so called possession in the year 1966, that is, nearly 37 years prior to the institution of the suit, I do not think there is any error in the two courts below granting the relief of injunction in favour of the plaintiff. The possession of the plaintiff was a settled one and if they have no right to continue in possession or if the defendant has a right to stay in possession by virtue of the grant made by the State, the defendant's remedy will be only to take possession in accordance with law by independent proceedings. The relief of injunction will continue to operate till the defendant takes possession in accordance in law. If such a suit were to institute or any other proceedings initiated in accordance with law before any other forum, the decree of injunction cannot come in the way. With this protection to the defendant, I will find that there is no modification possible. Second appeal is dismissed but with the above observations.

(K.KANNAN)
JUDGE

10.08.2015
sanjeev