

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.4418 of 2011 (O&M)

Date of decision: 06.10.2015

Shyam Lal

..... Appellant

versus

Lichman and others

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Ashish Gupta, Advocate for
Mr. Vikram Singh, Advocate for the appellant
Mr. C. B. Goel, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Impugned in the present regular second appeal is the judgment and decree dated 30.7.2011, passed by the learned Additional District Judge, Panipat, affirming the judgment and decree dated 1.3.2011, passed by the learned Additional Civil Judge, Senior Division, Panipat, vide which, the suit of the plaintiff for permanent injunction was dismissed.

Brief controversy in the present case is that according to the plaintiffs, they are proprietors biswedasrs in village Jaladpur-I having share in the abadi-deh, gora-deh, shamilat-deh etc. Since the time of consolidation, Jai Narain, Lichhu and Krishan, plaintiff No.1 were in cultivating possession over the suit land without paying anything to anybody. Now defendants are threatening to dispossess

them. The case of the defendants is that in 1968, an oral exchange took place between Ganpat, father of the defendants and Jai Narain, father of plaintiff No.2, Lichhu, Krishan sons of Mangat regarding the suit land, in which the suit land and other land was given to said Ganpat and since then Ganpat came in cultivating possession of the suit land along with some other land comprising in rect. No.57, Killa No.4, 5/1, 6, 7, 8, 5/2.

I have heard learned counsel for the parties and have also carefully gone through the file.

The lower Court has recorded the findings of facts that the plaintiffs have failed to prove their possession. The Lower Court has referred to the entries in the jamabandi for the years 1976-1977 (Ex.P6), wherein Ganpat, father of the defendant is recorded to be in cultivating possession of the land as Gair Marusi under Jai Narain father of plaintiff No.2, Licchu, Krishan and plaintiff No.1. The entry in this regard is that he is in possession as Gair Marusi Billa Lagan because of exchange. The said entry has continued till 1986-87. However, in the jamabandi for the year 1991-92, in cultivation column No.5 name of Ganpat was deleted and in column No.9 the nature of possession by way of exchange was also omitted and the same was repeated in the subsequent jamabandis. Later on Rapat No.330 (Ex.D3) was made in which said mistake was rectified and Ganpat was recorded as a tenant.

Learned counsel for the appellant has argued that presumption of truth is attached to the Jamabandi and that Rapat No.330 (Ex.D3) entered during the pendency of the suit and is not

binding. Since the plaintiffs are recorded to be in possession in the jamabandi, therefore, they are entitled to the injunction as prayed for.

I am of the view that the lower Court has rightly observed that there were continues entries of possession of Ganpat on the basis of exchange deed and there has to be some reason why name of Ganpat as Gair Marusi under Jai Narain, Licchu, Krishan was omitted and in column No.9 of jamabandi nature of possession by way of exchange was omitted. The presumption under Section 44 of the Punjab Land Revenue Act, 1887 is rebuttable presumption and when there is no explanation for the change of entry, the subsequent entries cannot be relied upon, particularly, when some mistake has been rectified through Rapat (Ex.D3), by rebutting the old entries. In addition to this plaintiff and their predecessors have filed a suit on 10.4.1989, which was dismissed under Order 9 Rule 8 CPC on 10.11.1994. This fact also weighed in the mind of the lower Court to decline the relief of the injunction. Since findings of facts have been recorded and no substantial question of law arises, therefore, this Court cannot interfere in the concurrent findings of facts recorded by the two Courts below.

Consequently, the present regular second appeal stands dismissed.

In view of disposal of the appeal, all the pending applications also stand disposed of.

06.10.2015
gk

(Kuldip Singh)
Judge