

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.118

LPA-1464-2015 (O&M)
Decided on : 30.10.2015

Rakesh

.... Appellant

VERSUS

**The Financial Commissioner (Revenue),
Haryana and others**

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.R.S.Manhas, Advocate, for the appellant.

RAJIVE BHALLA, J.
CM-3358-2015

CM is allowed and judgment and decree dated 24.08.2007, passed by the Additional Civil Judge (Senior Division), Jhajjar (Annexure A-1) is taken on record.

LPA-1464-2015

The appellant challenges order dated 01.09.2015, passed by the learned Single Judge and as a consequence, orders dated 28.04.2010 (Annexure P-1), 31.03.2011 (Annexure P-3) and 20.08.2014 (Annexure P-6), passed by the Assistant Collector, IInd Grade, Jhajjar, the Collector, Jhajjar and the Financial Commissioner, Haryana, Chandigarh, respectively.

Counsel for the appellant submits that the appellant filed an application for correction of khasra girdawari before the Assistant Collector, IInd Grade, on the plea that he is a tenant and in actual physical possession of land measuring 27 kanals and 1 marla. The

application was allowed on 19.11.1994 but eventually in an appeal filed by respondents No.5 and 6, order dated 19.11.1994 was set aside and the matter was remitted to the Assistant Collector, IInd Grade, Jhajjar, for adjudication afresh. The appellant filed an appeal before the Commissioner, Rohtak Division, Rohtak, which was allowed and the matter was remitted to the Collector for deciding the appeal filed by respondents No.5 and 6. The Collector, thereafter, remitted the matter to the Assistant Collector, IInd Grade, who heard the matter on 28.04.2010 and though he retired on 30.04.2010, passed an order on 07.05.2010, rejecting the application. The appeal filed before the Collector was dismissed on the erroneous premise that a civil court has held that the appellant is not a tenant. The Collector did not consider that the civil court judgment was recorded in a preemption suit and was, therefore, irrelevant. The revision filed by the appellant before the Commissioner was allowed and the matter was remitted to the Assistant Collector, IInd Grade, Jhajjar but the Financial Commissioner has set aside this order by holding that the khasra girdawari could not be corrected. Counsel for the appellant further submits that a khasra girdawari is recorded to reflect the true position relating to the person in actual cultivating possession. The question whether the appellant was a tenant or not, was neither germane nor necessary for adjudicating the controversy.

The writ petition has been dismissed in limine by primarily relying upon the civil court judgment which relates to a dispute regarding

preemption. The finding recorded in the civil suit regarding the fact that the appellant has not been able to prove his tenancy, could not have been taken into consideration.

We have heard counsel for the appellant and perused the impugned orders as well as civil court judgment.

The appellant sought correction of the khasra girdawari by asserting his status as a tenant and his consequent actual physical possession. The appellant was required to prove his tenancy. Admittedly, the appellant filed a suit seeking to preempt the sale deed executed by respondents No.5 and 6 on the premise that he is a tenant in cultivating possession. The Additional Civil Judge (Senior Division), Jhajjar, dismissed the suit by recording a categorical finding that the appellant has not been able to prove tenancy much less a right of preemption. A relevant extract from the judgment, reads as follows: -

“12..... The plaintiff in para no.2 of the plaint has specifically pleaded that he entered over the share of the defendant no.2 as tenant on payment of batai-tehai ten years before 11.11.1998. Meaning thereby, the tenancy between the plaintiff and the defendant no.2 commenced somewhere in the month of October/November 1988. The plaintiff has not proved on the record any document in order to establish the fact that tenancy between him and the defendant no.2 was commenced somewhere in the month of October/November 1988. The plaintiff has also not pleaded in his plaint as to whether the tenancy was created orally or by way of writing. Tenancy is a bilateral agreement. For that purpose, it is the duty of the plaintiff to prove that tenancy was created in a particular manner. The plaintiff during his cross-examination admitted that he was not known to Kedar Nath, the defendant no.2. When the plaintiff was not known to Kedar Nath then, how the tenancy was created between him and the defendant no.2 Kedar Nath. When no tenancy was created between the

plaintiff and the defendant no.2 Kedar Nath, then the question of relationship of landlord and tenant between the plaintiff and the defendant no.2 could not be believed. PW3 during his cross-examination stated that batai was given first time in the year 1993. This is the admitted fact on the record that no receipt with regard to payment of batai-tehai has been proved on the record. As per the statement of PW3, tenancy was actually operated upon in the year 1993. In this way also, the statements of the plaintiff and PW2 and PW3 are discrepant. The plaintiff has relied upon the Jamabandi for the year 1996-97, Ex.P3. In this Jamabandi, there is no entry to the effect that the plaintiff is tenant under the defendant no.2 Kedar Nath. The Khasra Girdawari Ex.P2 was corrected in favour of the plaintiff by virtue of order dated 19.11.1994, Ex.P7 of the A.C. IInd Grade, Jhajjar. However, this order is not at all in existence at this stage. The matter went up to the court of Commissioner and the Ld. Commissioner vide his order dated 27.1.2006 remitted back the case to the Collector. The Collector remitted the case back to the A.C.IInd Grade, Jhajjar for deciding the same afresh. This fact has been admitted by both the counsels at bar during the course of arguments. The name of the plaintiff as tenant was incorporated in the revenue record in compliance of the order dated 19.11.1994, Ex.P7 passed by the A.C. IInd Grade, Jhajjar Khasra Girdawari in the year 1996-97. However, as stated earlier, this order is no more in existence. Therefore, the revenue record created on the basis of order Ex.P7 can not be looked into. The plaintiff has not placed on the record any receipt with regard to the payment of rent either to the defendant no.2 or to the defendant no.1.”

The civil court having held that the appellant has not been able to prove his tenancy, there is no question of correcting the khasra girdawari for the year 1994.

Consequently, finding no merit, the appeal is dismissed.

[RAJIVE BHALLA]
JUDGE

30.10.2015
shamsher

[AMIT RAWAL]
JUDGE