

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

RSA No.2386 of 2012 (O&M)

Date of decision: 04.12.2015

Joginder Singh (deceased) through LRs ... Appellants

Vs.

Satnam Singh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. A.P.S.Shergill, Advocate
for the appellants.

Mr. N.K.Vadhera, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Appellant-defendant is in Regular Second Appeal against judgment and decree of the lower Appellate Court, whereby, judgment and decree of the trial Court decreeing the suit by way of restraint order, against the defendant not to interfere in their uninterrupted and continuous possession in respect of land measuring 19 kanals 13 marlas bearing Khata No.100/116 Rect. No.33, Killa No.19/2, 20/2, 21/2, 22 as entered in jamabandi for the year 1999-2000 situated in the revenue estate of village Gag Kalan, Tehsil Jagraon, District Ludhiana, on the basis of the oral documentary evidence, has been set aside/reversed.

Mr. A.P.S.Shergill, learned counsel appearing on behalf of the appellant-defendant submits that prior to filing of the present suit, the respondent-plaintiffs on 24.12.1991 had filed a suit for permanent injunction in respect of land measuring 34 kanals 5 marlas. The appellant-defendant had filed a written statement, stating therein, that he is in continuous possession of the land and he had to do nothing with the remaining land. The said suit was dismissed and the appeal filed against the same was also dismissed, therefore, the present suit in respect of land measuring 19 kanals 13 marlas which is forming part of 34 kanals 5 marlas, is not maintainable and the respondent-plaintiffs have failed to prove the possession and the trial Court rightly so, declined the injunction. There is no illegality and perversity in the judgment and decree of the trial Court but the lower Appellate Court has committed illegality and perversity in reversing the well reasoned judgment of the trial Court.

Mr. N.K.Vadhera, learned counsel appearing on behalf of the respondent-plaintiffs submits that after the dismissal of the aforementioned suit, appellant-defendant obtained report bearing No.422 in respect of the entire land land in collusion with Halqa Patwari, who had entered into said khasra girdawari which has been proved on record. He further submits that the findings rendered in the proceedings should/would not be read against the appellant inasmuch that as per the findings rendered in the previous suit, in para 12, it had been proved that respondent-plaintiffs were in

possession of rest of the land other than the land measuring 16 kanals 9 marlas. In support of his aforementioned contention, he drawn the attention of this Court to the findings rendered by the lower Court while dismissing the suit on 02.04.1997, in order to prove his possession proved on record vide Ex.P11 and Ex.P12, receipts of payment and jamabandis for the year 1990-91, 1999-2000 Ex.P15 and Ex.P16. Even in the written statement filed by the defendant in the previous round of litigation, Ex.D18 would reveal, that appellant-defendant had categorically stated in the written statement that he had nothing to do in respect of land measuring 16 kanals 9 marlas. Thus, no substantial question of law arises for adjudication of the present appeal and appeal is liable to be dismissed.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

It would be apt to reproduce the relevant paragraphs of judgment dated 02.04.1997 which read thus:-

“11. From the perusal of the Ex.D12, Ex.D13 and Ex.D14, it is revealed that defendant was not allotted any land in lieu of the pre-consolidation khasra Nos.33//2/1, 2/2, 3 and 25//19 and 23/1. A Local Commissioner was appointed in order to ascertain as to which khasra numbers were allotted in the consolidation proceedings in lieu of these khasra numbers. Sh. Kulwant Singh Uppal, Tehsildar Jagraon vide his report dated 14.3.1997 had

reported that the pre-consolidation khasra Nos. 30//2/1, 2/2, 3 were given the new khasra numbers after consolidation 37//2/1, 2/2 and 2/3, 3/1 and 3/2 respectively. Similarly, the pre-consolidation khasra No.25//23/1 was allotted 33//23/1 after the consolidation. His report shows that only rect. numbers were changed and the khasra numbers remained the same. PW1 Jaspal Singh who is a Sarpanch of village Gag Kalan has also stated in the cross-examination that in the latest consolidation proceedings which took place in the village in the year 1990, only rect. numbers of the landed property were changed while the killa numbers remained the same. The pre-consolidation revenue record show that the defendant had remained in cultivating possession over khasra No.25//23/1, 30//2/1, 2/2 and 3 measuring 16 K-9 M. How the plaintiffs entered into possession over these khasra numbers after the consolidation proceedings has not been explained by the plaintiffs. The entries regarding possession of the plaintiffs over these khasra numbers cannot be relied upon as the same are stray entries. The civil court had come to the conclusion in the previous suit vide its judgment and decree sheet Ex.D10 and Ex.D11 that the present defendant was in possession over these khasra numbers. Ex.D1 and Ex.D2 which are copies of the Raps No.238 dated 5.3.1987 and 251 dated 8.3.1985 reveal that the girdawaries were changed regarding these khasra

numbers in the absence of the defendant. Regarding the remaining suit land, the defendant had stated in his written statement that he has no concern with that land. Hence, to my mind, the defendant is in possession over khasra number 37//2/1, 2/2, 2/3, 3/1, 3/2 and 33/23/1 as he had remained in possession over these khasra numbers even before the consolidation proceedings. His possession over these khasra numbers had been upheld by the civil court vide judgment and decree sheet Ex.D10 and Ex.D11.

12. The plaintiffs have not been able to explain as to how the entries regarding possession were changed in their favour in the revenue record. The plaintiffs have further not been able to prove as to how and when they came to be in possession over this land. Regarding the remaining suit land, the defendant has stated in the written statement that he has nothing to do with the remaining land. To my mind, the plaintiffs have no locus standi or cause of action to file the present suit qua the remaining suit land against the defendant, DW2 Atma Singh has deposed that Malkiat Singh son of Santokh Singh in connivance with the Patwari had got the entries regarding cultivation changed in his name and during the consolidation proceedings he got the entries entered in the name of the plaintiffs regarding the land which was under the possession of the defendant. The possession of the plaintiffs over the suit land except the

land comprised in khasra No.37//2/1, 2/2, 2/3, 3/1 and 33/23/1 is established from the revenue record Ex.P1 and Ex.P2. Hence, issue No.1 is partly decided in favour of the plaintiff and partly in favour of the defendant.

On perusal of the aforementioned findings, it is evident that possession of the plaintiffs over the remaining land has been found to be intact except the one which the appellant-defendant had taken in the written statement with regard to the land measuring 16 kanals 9 marlas.

In my view, plea of Mr. Gill, that the finding rendered in the previous suit would be binding upon the appellant, is not therefore, sustainable and is hereby rejected.

There is another aspect of the matter that the Halqa Patwari, who had entered into agreement qua report No.422 in the year 2003 in respect of the whole land in favour of the appellant has departmentally been penalized/punished. For the purpose of claiming injunction, it is incumbent upon the respondents to prove their own settled possession which has been proved vide Ex.P16 and Ex.P17. In essence, once respondents had been able to prove their settled long possession. Thus, in my view, the finding rendered by the lower Appellate Court vis-a-vis the possession cannot be interfered with as the appellant has not been able to prove the possession.

Keeping in view the aforementioned observations, I do not intend to differ with the findings rendered by the lower Appellate

Court, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 04, 2015
savita