

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 4252 of 2012 (O&M)

Date of decision : April 08, 2015

Raj Rani and others

... Appellants

vs.

Hanuman Ji Mandir/Dera Sh. Hanuman,
Raghumajra, Patiala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.K. Gupta, Advocate
for the appellants.

Mr. Kanwal Goyal, Advocate
for the respondent no.1.

Surinder Gupta, J

Respondent no.1-Hanumanji, Mandir/Dera Hanumanji, Raghomajra, Patiala through its Mohatamim Lal Nath Chela Hardwari Nath filed suit for possession of land bearing khewat khatauni no.3656/5900, khasra no.1855 (3-0) situated at Patiala alleging that the suit land is owned by the plaintiff as per entries in *jamabandi for the year 1991-92*. Earlier Sohan Nath being Mohant/Mohatamim/manager of the Dera of Mandir was cultivating the suit land and after his death, the same was under the cultivation of Lal Nath, who was performing *Pooja* and managing the *Dera*. Sohan Nath was an illiterate person and khasra girdwari was recorded in the name of Hari Ram son of Ram Lal in an illegal manner. Hari Ram had died several years back and the entries in the khasra girdwari continued to be recorded in the name of a dead person. Defendant Raj Rani (since deceased now represented by her legal heirs), Mohan Lal and Raj Kumar (appellants) took forcible possession of the suit land in January, 1994 from Sohan Lal. The matter was reported to the competent authority but no action was taken. A panchayat was convened and the appellants were requested by the Panchayat and plaintiffs to hand over possession of the suit land, but in vain. Appellants earlier filed suit for injunction which was disposed of on a statement that they will not be dispossessed from the suit

land except in due course of law.

In written statement, appellants admitted ownership of suit property by Dera/Mandir Hanumanji, Raghomajra, Patiala but denied the status of plaintiff Lal Nath and Sohan Nath as Mohatamim/Manager of Mandir/Dera Hanumanji, Patiala or that they were performing *pooja* in the temple. They pleaded that Hari Ram father of defendants no.2 to 4, namely, Sham Lal, Mohan Lal and Raj Kumar and husband of defendant no.1-Smt. Raj Rani was a tenant in the suit property and after death of Hari Ram, defendants inherited the 'tenancy rights' along with his other legal heirs. Earlier entries in khasra girdawri recorded in the name of Hari Ram were never challenged by any one. The defendants applied for the correction of the entries in Khasra Girdawari in their names, as they continued to be in possession of the suit land and had already paid the rent. The plaintiffs/respondent No.1 tried to take forcible possession of the suit land but could not succeed and filed the instant suit with the plea that the property is owned by Dera.

The plaintiff-respondent no.1 re-asserted its case in the replication and contested and controverted the averments of the appellants that Hari Ram was tenant over the suit property.

Pleadings of the parties led to the framing of issues as follows :-

1. *Whether the plaintiff is entitled for possession of the suit land as prayed for?OPP*
2. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*
3. *Whether the jurisdiction of the civil court is barred under law?OPD*
4. *Whether the defendants are entitled for special costs of Rs.10,000/-?OPD*
5. *Whether the defendants are in possession of the suit land by way of their tenancy rights along with other legal notice (sic heirs)?OPD*
6. *Relief*

Civil Judge (Sr. Division), Patiala decreed the suit for possession of suit land with the observations that defendants are not tenants and their possession over the suit land was illegal.

Not satisfied, defendants filed appeal before Additional District Judge (Fast Track Court), Patiala, which was also dismissed. The plea of the appellants that they are tenant over the suit land was negated in para nos.17 and 18 of the judgment which reads as follows :-

“17. First of all Raj Kumar the present appellant submitted his affidavit which is Ex.D1 on the file. In whole of the affidavit not even a line has been mentioned as to how much rent is being paid by the defendants to the plaintiff Dera. The examination in chief is totally silent on the subject. Now coming to his cross examination, he goes to the extent of deposing that he does not know who is the owner of the suit property and he denies the suggestion that the property is owned by Mandir Hanumanji, if that is so it could not be said that they are paying rent to the plaintiff Dera/mandir. They are rather denying even the ownership of the Mandir. He admits that his father has expired about 16 years ago. He is deposing that he has not seen the title of the suit property and this conduct is totally unbecoming of a tenant who should have at least know the name of his landlord and the rate of rent being paid.

18. In the statement of appellant Raj Rani who has tendered her duly sworn affidavit Ex.D3 in the evidence, again this affidavit is silent regarding the rate of rent and to whom it is being paid. Not only the examination in chief is silent, in the cross examination she denies the suggestion that the suit property is owned by plaintiff Dera/Mandir. She specifically deposes that she has never paid any rent to anyone. Then the defendants have examined one Roshan Lal s/o Parsu Ram as DW2 to the effect that he knows the defendants including Raj Rani and he submits that they are cultivating the disputed land. The cross examination of Raj Rani go to show that she deposed

that she does not know any Roshan Lal S/o Parsu Ram, as such person has never visited her house or the land in question so the credibility of Roshan Lal has been washed away by Raj Rani herself, and the other witness examined as Munshi Ram S/o Dalip Singh as DW4 also does not speak any thing regarding the payment of rent. So, in those circumstances the conclusion of this evidence is that the present appellants neither admit the plaintiff Dera/Mandir to be a owner nor proved that they have paid the rent in any manner hence they could not be presumed as the tenant over the suit property and have to be treated as mere trespassers.”

Defendants Raj Rani, Mohan Lal and Raj Kumar along with Neeru wife of Sham Lal (since deceased) have filed this regular second appeal against the concurrent findings of the courts below. After the death of Sham Lal, his other legal heirs were impleaded as performa respondents no.2 to 4.

Learned counsel for appellants has argued that the suit land is admittedly owned by Mandir Hanumanji but possession over the suit land was earlier of Hari Ram father of appellants no.2 and 3 and Sham Lal (since deceased) and husband of appellant no.1. After his death, his legal heirs are in possession of the suit land. Hari Ram was duly paying *Chakota/Batai* to plaintiff. After his death, plaintiff-respondent no.1 interfered in the possession of appellants. They filed a civil suit no.228 of 12.4.1996 seeking relief of injunction and that the suit was decreed vide judgment dated 18.5.1996 passed by the court of Civil Judge (Jr. Division), Patiala. The *jamabandi* for the year 1971-72, 1981-82, 86-87 and 1991-92 proved on record as Ex.D6 to Ex.D9 show that predecessor in interest of appellants were tenant over the suit land, as such, the remedy available to plaintiff-respondent no.1 was to seek ejectment of the tenant and the suit for possession was not maintainable. Both the courts below have committed grave error of law and fact and have mis-read the evidence while reaching the conclusion that possession of Hari Ram appellant and after his death of his legal heirs as tenants over suit land was not duly proved. The plaintiff-respondent came up with the plea that the defendants-appellants forcibly

dispossessed them from the suit land but this plea was not supported by any evidence. The entries in the *jamabandi* conclusively proved that possession over the suit property was that of tenant and both the courts below had no reason to record findings contrary to the same particularly when the status of Hari Ram and his legal heirs as tenant was admitted in the suit for injunction.

Learned counsel for respondents has argued that title over the suit property is not disputed. The suit was filed by the competent person Sohan Nath as Mohatamim/Manager of plaintiff and after his death, Lal Nath was impleaded as Mohatamim/Manager of the plaintiff vide order dated 19.10.2000 passed by the Civil Judge (Jr. Division), Patiala which has become final. The earlier suit for injunction was filed by the appellants no.1 to 3 and Sham Lal against Sohan Nath and not against the plaintiff-respondent as such statement made by learned counsel for defendant in that suit is not binding on the plaintiff as it was not a statement made by the person duly authorised on behalf of plaintiff-respondent. The appellant and performa respondents are claiming their status of possession over the suit land as tenant. Both the courts below have discarded this plea as it is proved on file that appellant and performa respondents are not only denying the title of plaintiff-respondent but have also failed to prove their tenancy over the suit land and that they ever paid any rent to plaintiff-respondent or earlier Hari Ram ever paid the same. The entry in the revenue record i.e. *jamabandi* are rebuttable. The entry in the khasra girdawri carry no presumption of truth, as even after more than two decades of the death of Hari Ram it was continuing in his name. This shows that the entries in the revenue record were being made in a mechanical manner without any spot inspection. The finding of fact recorded by the courts below are based on appraisal of evidence on record calling for no interference and no substantial question of law arises in this appeal for determination.

I have carefully considered submissions of learned counsel for parties and perused the lower court record with their assistance.

Both the courts below have reached the conclusion on appraisal of evidence on record particularly the statement of appellant Raj Kumar and Raj Rani that defendants-appellants have failed to prove their possession

over the suit land as tenant.

This fact is not in dispute, despite statement by the appellant Raj Kumar and his mother that they are not aware as to who are the owners of the suit property, the title of the suit land vests with *Mandir Hanumanji* i.e. plaintiff-respondent no.1. In the *jamabandis* Ex.D6 to Ex.D9, relied upon by the defendants-appellants *Mandir Hanumanji* has been shown as owner of the suit property and Hardwari Lal was recorded as *Mohatamim* of this Mandir. Later on, as per entry in the *jamabandi* for the year 1991-92 (Ex.D9), Sohan Nath was recorded as *Mohatamim* of Mandir Hanumanji and now Lal Nath chela Sohan Nath is the *Mohatamim* of the plaintiff. The controversy regarding status of Lal Nath as *Mohatamim* was set at rest when he was allowed to be impleaded in this case as plaintiff in place of Sohan Nath deceased vide detailed order dated 19.10.2010 passed by Civil Judge (Jr. Division), Patiala.

Raj Kumar defendant-appellant while appearing as DW-1 has stated that his father expired about 20-22 years back. (His statement was recorded in the year 2003 and this shows that his father had died somewhere in the year 1980). He has shown his ignorance about the ownership of the suit property but has admitted that Lal Nath who has been impleaded as *Mohatamim/Manager* of plaintiff was a *Poojari* in Hanuman Mandir and performing *Pooja* there. He had gone to the extent of denying that suit property is owned by *Mandir Hanumanji* as per entry in the *jamabandi*, but has admitted that there are 7-8 *samadhs* in the suit property which are old one but was not aware if *samadh* of Sohan Nath, who had filed the present suit, was also constructed in the suit property. On the point of payment of rent, he has stated that the same was being paid by his mother Raj Rani, but he was not aware about the name of the landlord to whom the rent was paid. He was also not aware about the amount of rent paid by his mother and was not in possession of any document about the tenancy except the entry in the revenue record. The perusal of the testimony of Raj Rani, mother of appellant Raj Kumar, exhibit that she has rebutted and controverted the testimony of her son Raj Kumar. She has been very categorical while saying that she never paid rent or lease money of the suit land to any one. She has also denied that the suit land is owned by the plaintiff. It is no

where in the statement of DW-3 Raj Rani or DW-1 Raj Kumar that their tenancy over the suit land was ever under the plaintiff/respondent No.1 or any rent was paid to Hanaumanji Mandir by Hari Ram or after his death, by his legal heirs. DW-3 Raj Rani has admitted that there are *samadhs* in the disputed property but was not aware if *samadh* of Sohan Nath who had filed this suit as *Mohatamim* of plaintiff was also constructed in the suit property.

DW-5 Prithvi Raj has even rebutted Raj Kumar and Raj Rani and has stated that *samadh* of *Mahant* prior to Lal Nath i.e. Mahant Sohan Nath who had died was constructed in the suit property. The courts below after taking into account the testimony of appellant Raj Kumar and his mother Raj Rani have rightly reached the conclusion that the defendants have failed to prove their possession over the suit property as tenant. Civil Judge (Jr. Division), Patiala has even doubted the status of Raj Rani as wife of Hari Ram as in the sale deed Ex.PX her husband name is mentioned as 'Chattar Singh' which has not been got corrected so far. Vide this sale deed the house in which she is residing was purchased in the name of Raj Rani. In para 5 of the affidavit Ex.D3 tendered by her in her examination-in-chief she has not claimed tenancy of 'her husband' over the suit property rather she has claimed that 'her father' was a tenant in the suit property and after his death, the defendant inherited the tenancy right. The above point require no detail discussion as the appellants have failed to prove their tenancy over the suit property in either capacity as legal heir of Hari Ram or father of Raj Rani.

During the course of arguments, learned counsel for the respondent has drawn my attention to the statement in the suit filed by the appellant and Sham Lal against 'Som Nath' chela Hardwari Nath wherein learned counsel for the defendant 'Som Nath' made a statement that deceased Hari Ram was the tenant of Dera Mandir Hanumanji and will not be dispossessed except in due course of law. He has argued that in view of the statement the plaintiff stood estopped from challenging the status of Hari Ram as tenant over the suit property. The argument of learned counsel for appellant and the above statement of counsel for the defendant in that civil suit no.228 of 12.4.1996 in no manner binds the plaintiff. That suit was not filed against the plaintiff Hanuman Mandir and there is no evidence

that statement in that suit (Ex.D-17) was made by any person duly authorised on behalf of plaintiff-respondent no.1. The statement in that suit by counsel for 'Som Nath', who was impleaded in his personal capacity, in no manner operate as estoppel against the respondent no.1. It is not proved on record as to who was that 'Som Nath' and how the plaintiff/respondent no.1 is bound by his statement.

As a sequel of my above discussion, I find no legal or factual infirmity in the concurrent findings of fact recorded by both the courts below, calling for any interference.

No substantial question of law requiring determination arises in this appeal which has no merits.

Dismissed.

April 08, 2015

deepak

(Surinder Gupta)
Judge