

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 694 of 2012

Date of decision: 30.11.2015

Maan Singh and others

.....Appellants

Versus

Gurbax Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Premjit Kalia, Advocate,
for the appellants.

1. Whether Reporters of local papers 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?

Raj Mohan Singh, J.

1. Plaintiffs are in regular second appeal against the concurrent findings of the Courts below.

2. Plaintiffs filed a suit for declaration to the effect that they were in continuous possession of the land measuring 23 kanals 7 marlas situated in the area of village Matlanwala Janubi, Tehsil Zira and the entry in jamabandi for the year 2000-01 in column No.5 and the khasra girdawari for the year Kharif 1999 to Rabi 2003 showing the name of Central Government

were wrong and illegal. Order of the Financial Commissioner

dated 9.1.2006 was claimed to be void, illegal and against law and the judgment of the Civil Court dated 20.3.2001 was claimed to have operated as res judicata between the parties. Plaintiffs further alleged that plaintiff Balkar Singh had given special power of attorney to his son Anokh Singh to file and contest the suit as he was an old person. Balkar Singh died during pendency of the suit leaving behind his legal heirs, namely, Maan Singh, Anokh Singh, Nishan Singh, Gurdip Singh and Joga Singh. Accordingly, these persons were brought on record. Plaintiffs had claimed to be in continuous possession for the last 20 years, having installed electric motor in the suit land about 14 years after digging a bore and spent huge expenses to the tune of ₹ 60,000/-. In the year 1998, plaintiff Balkar Singh came to know about the khasra girdawari being recorded wrongly in the name of his elder brother Jagir Singh. An application for correction of khasra girdawari was moved before Assistant Collector, IInd Grade, Zira against defendant Nos. 2 to 9. Revenue Officer visited the spot in the presence of sons of Jagir Singh and ordered correction of khasra girdawari in the name of plaintiffs vide order dated 10.7.1998.

3. Plaintiffs further alleged that Jagir Singh had died in the year 1996. During the life time of Jagir Singh, family partition took place between plaintiff Balkar Singh and Jagir Singh and suit land came to the share of the plaintiffs. Feeling

aggrieved against the order dated 10.8.1998, passed by Assistant Collector, Zira, defendants No.2 to 9 filed an appeal in the Court of Collector, Zira. The Collector, vide order dated 12.2.1999, remanded the case to the Assistant Collector for deciding it afresh. Assistant Collector again visited the spot and held the plaintiffs to be in cultivating possession vide his order dated 4.8.1999. Against this order, defendants No.2 to 9 filed an appeal before the Collector. Vide order dated 14.2.2000, the Collector held that the plaintiffs were in possession of the suit land but had not paid *lagaan* to the Government, therefore, khasra girdawari of the land be entered in the name of Central Government. Plaintiffs further alleged that the order dated 14.2.2000, passed by the Collector, Zira was also illegal and void on the face of the record. Collector despite having admitted the plaintiffs to be in possession, could not have directed the khasra girdawari to be entered in the name of Central Government. The *lagaan*, if any, could have been received from the plaintiffs in due course of law. Appeal filed against the order dated 14.2.2000 by the plaintiffs was also dismissed by the Commissioner, Ferozepur vide order dated 21.11.2000. Defendants No. 2 to 5 also filed suit against the plaintiffs in the Civil Court at Zira for permanent injunction. The Civil Judge, vide judgment and decree dated 20.3.2001 held plaintiff Balkar Singh to be in actual possession and that judgment became

final.

4. In the jamabandi for the year 2000-01, the name of Central Government was recorded in column No.5 on the basis of order dated 14.2.2000 passed by Collector, Zira. Defendants filed revision before the Financial Commissioner, Chandigarh against the order of Commissioner. At the time of filing of the suit, plaintiffs claimed that they were not in knowledge of said pendency of the revision petition. The order passed by the Financial Commissioner dated 9.1.2006 has been claimed to be illegal and is barred by principle of res judicata because the judgment of the Civil Court dated 20.3.2001 operated as res judicata between the parties as the plaintiffs were in established cultivating possession of the suit land. After preparation of jamabandi, the jurisdiction of the revenue Court was ousted and only Civil Court had the jurisdiction for correction of jamabandi. Present suit came to be filed after serving legal notice under Section 80 CPC to the Central Government.

5. The suit was contested by defendants No. 2 to 9 on all grounds. It was claimed that Jagir Singh, father of defendants No.2 to 9 came into possession of suit land in the year 1980. He along with defendants No. 2 to 9 had made the land cultivable after incurring huge expenses and Jagir Singh remained in continuous possession of the suit land. Plaintiff Balkar Singh is the real brother of Jagir Singh and he was living

separately. They were separate in terms of residence and mess and were not even on speaking terms. Plaintiff Balkar Singh got recorded khasra girdawari in his name illegally in connivance with revenue officials. Defendants challenged the same up to the Financial Commissioner, who vide order dated 9.1.2006 directed to correct the khasra girdawari in the name of defendants.

6. Replication was not filed and from the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether LR's of deceased plaintiff are entitled to declaration as prayed for ? OPP

2. Whether the plaintiffs are entitled to the consequential relief for correction of khasra girdawari from kharif 1999 to 2003 and jamabandi for the year 2000-01 in the name of plaintiff as in cultivating possession ? OPP

3. Whether the suit is not maintainable ? OPD

4. Whether the plaintiff is having no cause of action to file the present suit ? OPD

5. Relief.”

7. Both the parties led their respective evidence in support of their case.

8. Trial Court discussed issues No.1 and 2 jointly and held the same against the plaintiffs. In view of findings recorded

under issues No.1 and 2, suit of the plaintiffs was ultimately dismissed vide judgment and decree dated 9.2.2009 as under issues No.3 and 4, defendants did not lead any evidence nor press the same before the trial Court. Plaintiffs filed an appeal before the District Judge, Ferozepur. Lower Appellate Court, vide judgment and decree dated 13.12.2011, held that the civil suit is maintainable in respect of correction of entries in the revenue record after preparation of jamabandi under Section 45 of the Punjab Land Revenue Act, but on the basis of evidence on record, the judgment/decree passed by the trial Court was upheld as the plaintiffs could not establish their possession over the suit land.

9 At the time of filing of appeal, learned counsel for the appellants formulated the following questions of law:-

“i) Whether the courts below have misread and mis-appreciated the evidence adduced by the parties on the file ?

ii) Whether the judgment and decree between the same parties in an injunction suit rendered prior in time can operate as a estoppel and resjudicata in a subsequent suit ?

iii) Whether the revenue courts are bound by the findings returned by the civil court on the factum of possession, while ordering the correction of khasra

girdawaris ?

iv) Whether the civil court can direct the revenue courts to correct the entries in the khasra girdawaris and jamabandis u/s 45 of the Punjab Land Revenue Act ?

v) Whether the civil suit is maintainable to seek such correction in the revenue record ?

vi) Whether a peace meal deposition of a witness without looking into his whole statement can form the basis of admission of a fact ?”

I have heard arguments of learned counsel for the appellants.

10. Vide order dated 12.5.2015, coordinate bench of this Court observed that the main law points formulated by the appellants in the appeal do not suffice to serve the purpose of substantial question of law. When learned counsel for the appellants was confronted with this situation, he sought time to frame substantial question of law for determination under Section 100 CPC. No substantial questions of law have been framed thereafter.

11. During the course of arguments, learned counsel for the appellants stressed that questions No. 2 and 4 be treated as substantial question of law in the present appeal.

12. Learned counsel for the appellants contended that the

plaintiffs-appellants were in established possession for the last 20 years and had installed an electric motor in the suit land for about 14 years back after digging a bore and they had incurred more than ₹ 60,000/- for aforesaid installation. In the year 1998, plaintiffs came to know about the recording of wrong girdawaris in the name of his elder brother Jagir Singh, therefore, they filed an application for correction of khasra girdawari before the Assistant Collector, Zira against defendants No.2 to 9. Assistant Collector, at the first instance as well as after remand by the Collector, held the plaintiffs to be in established possession of the land in question and ordered for correction of khasra girdawari. Plaintiffs further claimed that there was a family partition between plaintiff Balkar Singh and his brother Jagir Singh, who died in the year 1996 and the suit land had come to his share. Defendants No.2 to 9 filed appeal before the Collector, who vide order dated 14.2.2000 held the plaintiff to be in possession, but since *lagaan* was not paid to the Central Government, therefore, it was ordered that the khasra girdawari be entered in the name of Central Government. The order of Collector was claimed to be illegal, but the same was been upheld by the Commissioner vide order dated 21.11.2002. In the meantime, defendants No.2 to 5 also filed suit for permanent injunction. The Civil Court dismissed the suit vide judgment and decree dated 20.3.2001 and plaintiff Balkar Singh

was held to be in actual physical possession of the suit land. That decree became final between the parties. During that period jamabandi for the year 2000-01 was prepared and in the column of cultivation, name of Central Government came in, to be recorded pursuant to order dated 14.2.2000 passed by the Collector, Zira. Revision petition was filed before the Financial Commissioner. Plaintiffs were not aware about the pendency of the revision petition and had filed the present suit. The order passed by the Financial Commissioner dated 9.1.2006 was claimed to be illegal and not binding upon the plaintiffs. Principle of res judicata was also claimed to be involved.

13. Learned counsel for defendants No.2 to 9 claimed that Jagir Singh, father of defendants No.2 to 9, came into possession of the suit land in the year 1980. They made the land cultivable by incurring huge expenses. Since 1980, Jagir Singh remained in an un-interrupted possession of the suit land. Plaintiffs were living separately from Jagir Singh. They were having separate residences and mess and were not on speaking terms. Plaintiff Balkar Singh got recorded khasra girdawari wrongly in his favour in connivance with revenue officials. Defendants challenged the said wrong entries right up to the Financial Commissioner, who vide order dated 9.1.2006 directed for correction of khasra girdawari in the name of the defendants.

The Commissioner, Ferozepur dismissed the appeal of the

plaintiffs. In the revision before the Financial Commissioner, plaintiffs appeared through their counsel and the order was passed in the presence of learned counsel for the plaintiffs. Plaintiffs did not assail the said order in appropriate form i.e. by way of writ petition in the High Court. Plaintiffs stated that they had no knowledge about the pendency of revision petition before the Financial Commissioner, but their version stood belied in view of presence of their counsel Sh.R.S.Aulakh in the Court of Financial Commissioner. Plaintiffs contested the revision petition and having lost it, they cannot turn around and say that the order was passed at their back.

14. In view of orders of Collector and Commissioner, the order of Financial Commissioner dated 9.1.2006 could not be found faulty as the same had attained finality. All the orders passed by the officers in hierarchy stood merged in the final order passed by the Financial Commissioner on 9.1.2006, which was not assailed by the plaintiffs. Rather the plaintiffs claimed that, the order was not in their knowledge and they filed the present suit. Once the order passed by the Financial Commissioner was found to have been passed in the presence of learned counsel for the plaintiffs, in that eventuality it could not be said that the order was passed at their back. Since the order of Financial Commissioner had attained finality, therefore, plaintiffs could not have said that they are still in possession of the suit land.

15. Civil Court decree dated 20.3.2001 though became final, but the said decree was inter se between the plaintiffs and sons of Jagir Singh. In the aforesaid judgment and decree, it was held that sons of Jagir Singh were not in possession of the suit land, but it was never held that plaintiff Balkar Singh was in possession of the suit land. Issue No.5 was specifically framed regarding the fact that whether the plaintiff in the present case i.e. Balkar Singh came into possession of the suit land due to partition effected between Jagir Singh and him, but this issue was not pressed by plaintiff Balkar Singh in the said suit and it was decided against him. Therefore, aforesaid judgment cannot be presumed to be in favour of plaintiff Balkar Singh and the same is not conclusive in the present context. Anokh Singh had admitted that the suit land was in possession of the defendants since the life time of Jagir Singh for the last 20-25 years. This admission of Anokh Singh in the first instance created serious doubts in the plea of the plaintiffs that they are in possession of the suit land for the last 20 years prior to institution of the suit. The plea of the plaintiffs being in possession stood belied, if examined in the light of statement of Anokh Singh that the partition took place between Balkar Singh and Jagir Singh in the year 1977. Plaintiffs have failed to lead sufficient and satisfactory evidence to establish that Balkar Singh was in possession of the suit land. Anokh Singh in his cross-

examination has deposed the factum of partition between Balkar Singh and Jagir Singh in the year 1977 and both families got 8-1/4 killas each of their ownership and besides land of their ownership, they had been cultivating 10 killas of land of Central Government. No document has been brought on record in respect of land under ownership of Jagir Singh and Balkar Singh in order to substantiate the factum of partition between them. If there was some family partition, there was no reason for Balkar Singh having not ensured the same to be given effect in the revenue record during life time of his brother Jagir Singh. The aforesaid plea even further aggravated that despite knowing that there was a family settlement, plaintiff Balkar Singh and Jagir Singh waited for more than two decades in moving the revenue authorities for correction of khasra girdawari. If there was really a partition between the brothers in the year 1977, there was no reason for Balkar Singh having not asked for possession of the land, which was shown in the name of Jagir Singh till the year 1988-89. The record is conspicuously silent about the aforesaid facts. Even after the family partition in the year 1977, Jagir Singh remained in continuous possession of the land in question till 1984. How the plaintiff could reconcile the aforesaid situation even despite the alleged plea of family partition in the year 1977 as per statement of Anokh Singh.

16. In view of aforesaid law point No. 2 cannot be

considered to be substantial question of law. The suit instituted at the instance of Jagir Singh even though dismissed but in terms of findings recorded under issue No.5, plaintiffs were never held to be in possession of the suit land, therefore the said judgment does not operate as estoppel or res judicata for a subsequent suit. The second question as claimed to be substantial question of law i.e. question No.4 has its own interpretation. Even if Civil Court is competent to have the jurisdiction for correcting the khasra girdawari after preparation of jamabandi, the same cannot be answered in favour of the plaintiffs in view of the fact that all orders passed in hierarchy stood merged in the order of the Financial Commissioner. The order of Financial Commissioner having not been challenged, therefore no relief can be granted to the plaintiffs even on this question of law, which in considered opinion of this Court does not arise in the present case. Even if other questions as formulated in grounds of appeal are taken into consideration, the same cannot advance the case of the plaintiffs inasmuch as that the findings recorded by the Courts below cannot be termed as findings based on no evidence or are the result of any misreading of evidence or having suffered with perversity of any nature. Question No.3 can be appreciated in the light of order passed in hierarchy up to the Court of Financial Commissioner.

The order of Financial Commissioner cannot be treated to be ex parte order. Presence of learned counsel was duly recorded in the order passed by the Financial Commissioner, therefore, it cannot be presumed that the order of Financial Commissioner was passed at the back of the plaintiffs. Question No.5 has its answer in question No.4. Even if civil suit is maintainable for the correction of khasra girdawari effected prior to preparation of jamabandi in the revenue record, still the plaintiff has to stand on its own legs. The evidence adduced by the plaintiffs on the plea of family partition since 1977 and the filing of application only in the year 1984 and other attending circumstances in view of the case do not make out a case in favour of the plaintiffs. The evidence on record, statement of Anokh Singh and order passed by the Financial Commissioner having not been challenged, make the case of the plaintiffs to be wholly unsustainable. Therefore, question No.6 as suggested by the plaintiffs does not arise on correct appreciation of evidence on record. Questions as formulated above cannot be treated to be substantial questions of law.

17. In view of consideration of facts and evidence having been made by both the Courts, this Court does not feel that the case in hand requires any further appreciation of evidence in second appeal. No question of law worth consideration is

involved in the present appeal and the same is accordingly dismissed.

**(RAJ MOHAN SINGH)
JUDGE**

November 30, 2015

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