

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

**CM No.588-CII of 2015 in/and
SAO No.32 of 2012 (O&M)
Date of decision: 12.01.2015**

Zora Singh and another

....Appellants

Versus

Bhinder Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Mohd. Yousaf, Advocate for the appellants.

Rakesh Kumar Jain, J. (Oral)

CM No.588-CII of 2015

Application is allowed, subject to all just exceptions and
Jamabandi as Annexure A-1 is taken on record.

SAO No.32 of 2012

The present appeal has been filed by defendants No.1 and
2 against the order of the Appellate Court by which the judgment and
decree of the trial Court was set aside and the case was remanded
back to the trial Court to decide it afresh.

In brief, the plaintiff filed suit for partition of land
measuring 1 Bigha 10 Biswas, falling in khasra No.2402/1102 (1-10)
as per jamabandi for the year 1993-94 alleging it to be Gair Mumkin
Abadi. The trial Court dismissed the suit on the ground that as per

jamabandi for the year 2003-2004 (Ex.P-2) the nature of the land is agricultural as it is recorded therein as 'Chahi'. The Appellate Court, however, set aside the judgment and decree of the trial Court on the ground that the plaintiff has specifically averred in the plaint that the suit land is Gair Mumkin Abadi, which is not rebutted by the appellants as they have not filed the written statement, therefore, the Court has wrongly observed that the suit land is agricultural and the jurisdiction vests with the revenue authorities and not with the Civil Court.

Initially, notice of motion was issued in this case on 24.05.2012 and the passing of final judgment by the trial Court was stayed. Thereafter, service upon respondent No.1 was effected and service of respondents No.2 to 6 was dispensed with as they are the performa respondents. On 29.08.2014, since the counsel for the appellants was not appearing, the stay granted to him vide order dated 24.05.2012 was vacated. Counsel for the appellant has also placed on record copy of the jamabandi for the year 2003-2004 through C.M. No.588-CII of 2015 which has been allowed today by a separate order.

Counsel for the appellants has submitted that the disputed land is recorded as 'Chahi' in the jamabandi for the year 2003-2004 (Ex.P2). This jamabandi could not have been relied upon to hold that the land in dispute is Gair Mumkin Abadi and the judgment and decree could not be set aside only on the ground that the present appellants have not filed their written statement to rebut the claim of the plaintiff about the nature of the disputed land as the evidence led by the plaintiff himself by way of jamabandi for the year 2003-2004 (Ex.P-2)

shows that the land in dispute is agricultural. It is further submitted that in the latest jamabandi the nature of suit land has been recorded as agricultural for which the Civil Court has no jurisdiction as application for partition could only be filed in terms of Section 111 of the Punjab Land Revenue Act, 1887.

After hearing learned counsel for the appellants and examining the record, I am of the considered opinion that the order passed by the learned Appellate Court is patently erroneous as the sole ground for setting aside the judgment and decree of the trial Court is that the appellants did not file the written statement to deny the averments made by the plaintiff in his plaint to the effect that the land in dispute is 'Gair Mumkin Abadi' and not 'chahi'. As a matter of fact, the documents produced by the plaintiff himself i.e. (Ex.P2) shows that the land in dispute is 'chahi' and as such, the Civil Court has no jurisdiction.

Keeping in view the aforesaid circumstances, the present appeal is allowed and the order passed by the Appellate Court dated 27.03.2012 is hereby set aside.

January 12, 2015
Manoj Bhutani

(Rakesh Kumar Jain)
Judge