

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.412 of 2013 (O&M)

Date of decision: 01.09.2015

Balwan Singh

..... Appellant

versus

Satbir Singh and others

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Sanjay Vij, Advocate for the appellant
Mr. Lokesh Sinhal, Advocate for the respondents

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Impugned in the present regular second appeal is the judgment and decree dated 30.8.2012 passed by the learned Additional District Judge, Gurgaon, affirming the judgment and decree dated 25.11.2011, passed by the learned Civil Judge, Junior Division, Gurgaon, vide which, the suit of the plaintiff for declaration to the effect that he along with the proforma defendant No.3 are in peaceful cultivating possession of the suit land as tenant Gair Marusi and further that the Rapat Roznamcha Vaquati no.89 for the year 1988-89 of Halqaua Khurampur, Tehsil and District Gurgaon dated 1.10.1998 reporting correction of khasra girdwari in favour of defendant Nos.1 and 2 and the subsequent entries in khasra girdawari till date are wrong, against law, illegal and not binding on

the rights of the plaintiff and proforma defendant No.3 and are liable to be set aside and corrected in favour of plaintiff and defendant No.3. By way of consequential relief, permanent injunction was also sought, restraining defendant No.1 and 2 from interfering in the peaceful possession of the plaintiff and proforma defendant No.3 as tenant gair marusi. The said suit was dismissed.

The case of the plaintiff is that originally, Hari Singh was tenant in possession over the disputed property. Hari Singh had two sons, namely Ram Chander and Raghubir. Defendant Nos.1 and 2 are sons of Ram Chander, whereas plaintiff and proforma defendant No.3 are sons of Raghubir. Hari Singh was in the continuous possession of the suit land for the last 60 years. Ram Chander, father of defendant Nos.1 and 2 pre-deceased Hari Singh on 20.8.1964. Hari Singh died later in the year 1974. After the death of Hari Singh, Raghubir Singh father of the plaintiff and proforma defendant No.3 inherited the tenancy rights from Hari Singh and came in possession of the disputed property as tenant Gair Marusi. At that time, defendant Nos.1 and 2 were minors. Hence, they did not inherit the tenancy. Raghubir continued to cultivate the land till his death in the year 1983 and after his death plaintiff and proforma defendant No.3 inherited the tenancy rights from their father. It is stated that defendant Nos.1 and 2 in collusion with Patwari got the report in the daily diary register No.89 of 1988-89 entered and got the khasra girdawari changed in their name. Plaintiff came to know about the said entry in the daily diary register on 8.8.2006.

The case of the defendant Nos.1 and 2 is that plaintiff

was adopted by his father's sister Smt.Shama Kaur and therefore, he could not inherit the tenancy rights of Raghubir Singh. Defendants claimed that after the death of Hari Singh, defendants and their mother came in possession of the suit property and also received compensation with respect to suit property from the State Government.

The lower Court held that plaintiffs have failed to prove that he and his brother are in possession of the disputed property. It was found that there exists a building and plaintiff does not know who purchased the said property from defendants Rajbir and Satbir. It was further held that suit for declaration has to be filed within three years from the date right first accrued. The limitation point was decided in favour of the plaintiff. In appeal, the findings of the lower Court were affirmed while holding that defendant Nos.1 and 2 have sold their share in the suit land to somebody else.

I have heard learned counsel for the parties and have carefully perused the file.

The findings of both the Courts below regarding possession are findings of facts and cannot be interfered with in the regular second appeal. Moreover, the plaintiff claimed the declaration that their grandfather was Gair Marusi over the property for the last more than 60 years. Occupancy of the agricultural land for such a long period will create certain vested rights in favour of the plaintiffs as occupancy tenants. Therefore, any finding that the plaintiffs and their predecessors are tenants in the disputed property for continuously more than 60 years is likely to affect the rights of the

original owner. Unfortunately, the original owner is not party to the suit. Therefore in his absence, no declaration can be granted in favour of the plaintiffs.

It being so, I do not find any merit in the present appeal.
The same is accordingly dismissed.

In view of disposal of the appeal, all the pending applications also stand disposed of.

01.09.2015
gk

(Kuldip Singh)
Judge