

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

**Regular Second Appeal No.4412 of 2013 (O&M)
Date of Decision: September 29, 2015.**

Khushal Singh

.....APPELLANT(s).

VERSUS

Taro Bai and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Raman Goklaney, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This regular second appeal has been filed by plaintiff Khushal Singh against the judgment of District Judge, Ferozepur whereby the appeal filed by Taro Bai and others (respondents in this appeal) against the judgment and decree passed by Civil Judge (Junior Division), Jalalabad(W), was accepted and the suit of the plaintiff was dismissed.

(In the later part of the judgment, parties will be referred as plaintiff and defendants as in the civil suit.)

Khushal Singh filed suit seeking the relief as follows:-

“Suit for possession of land measuring 08 kanals comprised of rect. No.24 killa No.15/2(4-0), 16(4-0), khewat No.2 Khatoni No.26 as per jamabandi for the year 2004-05 situated within the revenue estate of village Chak Totianwali, Tehsil Jalalabad with consequential

relief of permanent injunction restraining the defendants from transferring the possession of abovesaid land in favour of any person except to the plaintiff or otherwise from converting the nature of suit land in any manner whatsoever on the basis of oral and documentary evidence of all kinds as required and found necessary.”

As per the plaintiff, he is owner of the suit land as fully described above. Earlier Matab Singh son of Sardara Singh father of defendant No.1 and father-in-law of defendant No.2 was in cultivating possession of the land being gair marusi (tenant at will) on payment of 1/3rd share of the produce. Matab Singh was married with Veero Bai and from this wedlock four daughters namely Jeeto Bai, Sabban Bai, Taro Bai and Piaro Bai were born. They all are now married. Veero Bai wife of Matab Singh died during his life time and Matab Singh expired on 12.01.2005. As per the provisions of Section 59 of the Punjab Tenancy Act, 1887 daughters are not heirs to tenancy of land which stand reverted to the land owner. After the death of Matab Singh, the defendants forcibly and illegally and without consent of plaintiff occupied the suit land as trespassers. Their possession is illegal, forcible and unauthorized and plaintiff being the owner is entitled to the possession of the suit land. He also sought the relief of injunction restraining the defendants from transferring the suit land in favour of any person.

In the written statement, the defendants contested the claim of the plaintiff inter-alia pleading that Matab Singh was cultivating the suit land as tenant gair marusi. During the life time of Matab Singh, defendants used to cultivate the suit land with his consent on *batai* basis and the plaintiff was

well aware of this fact. He never raised objection at any point of time. After the death of Matab Singh, the defendants have been continuously in possession of the suit land as tenant in the same capacity like Matab Singh and their possession is not as unauthorized occupant of the suit land.

Plaintiff reiterated the case in the replication and pleadings of the parties led to the framing of following issues:-

- (1) Whether the plaintiff is entitled to possession of the land in dispute ?OPP
- (2) Whether the suit of the plaintiff is within limitation?OPP
- (3) Whether the court has no jurisdiction to entertain and try the present suit? OPD
- (4) Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD
- (5) Relief.

Learned Civil Judge on the basis of entries in the revenue record, recorded the finding about the title of the plaintiff as owner and possession of Matab Singh as tenant, in para 10 and 11 which reads as under:-

“10. While the plaintiff is depicted as owner of the suit land in the aforesaid revenue record, having purchased the same, deceased Matab Singh is depicted to be in cultivating possession of the same as tenant 'gair marusi' though the defendants have pleaded that they were jointly cultivating the suit land with deceased Matab Singh, during the life time of Matab Singh and that they were also the tenants in the suit land owned by the plaintiff. The aforesaid contention of the defendants is meritless as the alleged mere joint

cultivation of the suit land by the defendants alongwith Matab Singh would not cloak the defendants with the garb of the tenants qua the suit land. Also though the defendants have asserted that plaintiff admitted them to be tenants in the suit land, the aforesaid assertion of the defendants as made though the written statement, has been denied by the plaintiff in his replication and the defendants have failed to step into the witness box to support their aforesaid stance. As such, since the death of the admitted occupancy tenant Matab Singh is undisputed, in view of the uncontroverted pleadings of the plaintiff that Matab Singh had no male child, it is to be stated, in view of the provisions of Section 59 of the Punjab Tenancy Act, 1887, that the daughters were not competent heirs with regard to the right of occupancy of the suit land. Though, aforesaid Section 59 of the Punjab Tenancy Act, 1887 also enumerates that in case there is no male lineal descendants, widow or widowed mother of the occupancy tenant, the right of occupancy shall devolve on his male collateral relatives in the male line or descent from the common ancestor, provided that the common ancestor also occupied the land in question, no such existence of any collateral has been pleaded on behalf of the defendants. Moreover, it is for such competent collateral, if any, to come forward to establish his claim to the occupancy of the suit land and the defendant no.1 being the daughter of the deceased tenant and defendant no.2 being the son-in-law of the deceased tenant, the instant defendants are not entitled to inherit the right of occupancy of the suit land, whatsoever.”

The first Appellate Court reversed the above findings on the ground that plaintiff being one of the cosharer, could not claim exclusive

possession of the suit land, secondly he had stated while appearing in the witness box that he is in possession of the suit land and if he is in possession of the suit land, he cannot seek the relief of possession.

Learned counsel for the appellant-plaintiff has argued that the tenancy rights of occupancy tenants are inheritable by male lineal descendant or widow or widowed mother of the tenant as per provisions of Section 59 of Punjab Tenancy Act. In this case, wife of Matab Singh had already died. He has not left behind any male lineal descendant or widowed mother. No male collateral left on male line of descent from the common ancestor of the deceased has come forward to claim tenancy rights, as such, the tenancy got extinguished and plaintiff is entitled for possession of the suit land. The first Appellate Court has committed grave error of law and fact while dismissing the suit relying on a single line in statement of plaintiff that he is in possession of the suit land. Appellant-plaintiff filed suit seeking the relief of possession and it is a case of the defendants that the land in the suit is in their possession. So far as the observation of the first Appellate Court that plaintiff cannot claim possession in the unpartitioned property is irrelevant as the defendants have not denied that Matab Singh was tenant under the plaintiff. This being so, the plaintiff has every right to seek possession of the suit land.

The substantial question of law requiring determination in this appeal is as follows:-

“Whether the error in the statement of plaintiff while appearing as witness, vitiates his claim seeking possession, in the facts and circumstances of this case.”

This fact is not disputed that Matab Singh as per the entry in the jamabandi for the year 2004-05 (Ex.P1) was recorded to be a tenant under the plaintiff. In these facts and circumstances, it is irrelevant that plaintiff is one of the cosharers in the joint land along with others. While appearing as PW1, plaintiff has stated that the suit land is under his possession and the defendants are intending to take forcibly possession of the same. The statement of the plaintiff is to be read as a whole. In the affidavit Ex.PW1/A, plaintiff has specifically stated that the land was earlier in possession of Matab Singh and is now in possession of defendants. Even the revenue record i.e. jamabandi Ex.P1 and khasra girdawari Ex.P2 show that it is Matab Singh, who was in possession of the suit land. It appears that either there was some mistake while recording statement of the plaintiff or the plaintiff has stated under some wrong impression that he is in cultivating possession of the suit land. Even the defendants have alleged in the written statement that they are in cultivating possession of the suit land. The first Appellate Court has committed grave error while dismissing the suit on above statement of the plaintiff. As a general practice, it is required that whole evidence be read and not one line in examination-in-chief or cross-examination can be picked up to reach a conclusion. A question will certainly arise here that the statement of plaintiff that he is in cultivating possession of the suit land, can be taken as admission of the fact which is against the pleadings, case of the defendants and the evidence on record. The above statement of plaintiff cannot be taken as admission under Order 12 Rule 2 CPC. This instead of admission of a fact appears to be an omission somewhere. The first Appellate Court has also attempted a half

hearted reference to the above fact and has failed to record a firm finding that the plaintiff is in possession of the suit land, as such, is not entitled to the relief as claimed in the suit. In the absence of such firm finding, the claim of the plaintiff seeking relief of possession cannot be declined on the mere ground that in one line of his statement, he claims himself to be in cultivating possession of the suit land.

In view of the above facts and circumstances, the findings of the learned first Appellate Court are perverse, against facts and law and are required to be set aside. The substantial question of law is answered in favour of the appellant-plaintiff.

This appeal has merits and the same is allowed. The judgment and decree passed by the first Appellate Court is set aside and that of Civil Judge (Junior Division), Jalalabad (W) decreeing the suit of the plaintiff, is affirmed.

September 29, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether refer to reporters: ☒ *Yes/No*