

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

**RSA NO. 1806 OF 2015 (O&M)
DECIDED ON : 04.05.2015**

Gindori and others

...Appellants

versus

Gopal Saren and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Lokesh Sinhal, Advocate.

K. C. PURI, J. (ORAL)

This is an appeal directed by the plaintiff/appellants against the judgment and decree dated 18.11.2014 passed by Shri Narender Shura, Additional District Judge, Narnaul, vide which the appeal preferred by the defendant No.1 Gopal Saran against the judgment and decree dated 01.02.2011 passed by Shri R. S. Dhanda, the then Additional Civil Judge (Senior Division), Narnaul, was accepted and the suit of the plaintiff was dismissed.

Briefly stated, the facts as gathered from the record are that the plaintiffs filed a suit for injunction against the

defendants to the effect that the land measuring 445 kanals is owned by the Custodian Department, Haryana Government. It is averred that Rampat, father of the plaintiffs, came in possession over the suit property as Gair Marusi on the payment of Rs.10/- per year. It is further averred that the suit property is Gair Mumkin Pahar. It is further pleaded that father of the plaintiffs had planted trees in the suit property. Rampat died on 11.01.1999 and after his death, the plaintiffs are in possession of the suit property being tenants. The defendants have no concern with the suit property. Hence, suit was filed.

The suit was contested by defendant No.1 by way of filing written statement, wherein he took preliminary objections of maintainability; cause of action; locus standi; concealment of material facts; non-joinder and mis-joinder of necessary parties. The ownership of Haryana government was admitted. However, it was denied that Rampat was ever given the property on Chakota. It was further pleaded that the plaintiffs are not in possession of the suit property. It was also pleaded that the suit property is leased out by Haryana government from time to time, in open auction. The lease agreement dated 24.03.1999 executed in favour of defendant-Lutufpur mines was admitted. It was further pleaded that the suit property was leased out to defendants of Lutufpur Mines from 03.05.1999 to 31.03.2002. It was further pleaded that the plaintiffs cannot interfere in the mining process conducted by the defendants.

Replication was filed wherein all the averments made in the written statement were denied and those made in the plaint were reiterated.

From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiff is in possession over the suit property being gair morusi tenant ? OPP
- 2) Whether the plaintiff is entitled to get permanent injunction as prayed for ? OPP
- 3) Whether the plaintiff has got no locus-standi to file the present suit ? OPD
- 4) Whether the present suit is not maintainable ? OPD
- 5) Relief.

In order to prove their case, the plaintiffs examined Girdhari Lal as PW-1 and closed the evidence after tendering documents.

On the other hand, defendant No.1 Gopal Saran himself stepped into the witness box as DW-2 and examined Ashok Kumar as DW-1, Jitender Kumar, Clerk as DW-3 and closed the evidence.

The learned trial court has taken Issues No.1 and 2 together and returned the findings on these issues in favour of the plaintiffs and against the defendants. Issues No.3 and 4 were

not pressed before the trial court and as such, the findings on these issues were also given in favour of the plaintiffs and against the defendants. Consequently, in view of the findings given on Issues No.1 and 2, the suit of plaintiffs was decreed.

Feeling dissatisfied with the above said judgment and decree dated 01.02.2011, the defendant No.1-Gopal Saran preferred first appeal. The said appeal was accepted by Shri Narender Shura, Additional District Judge, Narnaul vide judgment and decree dated 18.11.2014 and consequently, the suit of plaintiff was dismissed.

Still feeling aggrieved with the judgment and decree dated 18.11.2014 passed by Shri Narender Shura, Additional District Judge, Narnaul, the plaintiffs/appellants have preferred the instant regular second appeal.

The appellants in para no. 8 of the grounds of appeal has mentioned that following questions of law have arisen in the present appeal :-

- 1) Whether the presumption of truth attached with the entries in the Jamabandi stands rebutted by any evidence produced by the defendants ?
- 2) whether the payment of actual rent is necessary to establish the status of payment even though the column No.9 of the Jamabandi shows that possession is as tenant on the payment of chakota of Rs.10/- per year ?

- 3) Whether the appeal filed by the defendant No.1 before the learned Lower Appellate Court ought to have been dismissed as infructuous in view of the fact that lease in his favour had expired on 31.03.2002 ?
- 4) Whether the State of Haryana was necessary party to be impleaded as defendant ?
- 5) Whether the findings recorded by learned Lower Appellate Court are perverse ?
- 6) Whether the learned Lower Appellate Court has misread the evidence led by the parties ?

Although number of questions of law mentioned above have been raised in the instant appeal but none of these questions of law exists in the present case. It is a mere suit for permanent injunction. The plaintiffs can only succeed if the plaintiffs are able to prove their possession over the suit property. There is finding of fact recorded by Lower Appellate Court that plaintiffs have failed to prove their possession over the suit property. It is proved on record that from 03.05.1999 to 31.03.2002, the defendants were leased out the suit property. The learned Appellate Court has also observed that since 1985 to 2002, the land has been leased out by the Haryana government to different persons as mentioned in para no.17 of the impugned judgment. Since the Haryana government has been leasing out the property to different persons from time to time and as such,

the entry in the revenue record showing the predecessor-in-interest of plaintiffs as lessee/chakota, are wrong on the face of it. It is settled law that entries in the Jamabandi although carries presumption of truth but are rebuttable. The defendants are able to rebut that the presumption by proving on record that the suit property has been leased out by Haryana government from 1995 onwards from time to time. Learned Lower Appellate Court has also observed that the plaintiffs have failed to prove their lessee rights in the property as no document regarding payment of chakota has been produced on record. Moreover, it is settled law that in respect of vacant land, the possession would be deemed to that of the owner. It is the case of plaintiffs themselves that the suit property is Hillock (pahar) and as such, the entries in the Jamabandi/Khasra Girdawari showing them as chakotadar are meaningless.

Learned counsel for the appellant has submitted that since lease period of the defendants had expired and as such, the suit of the plaintiffs be decreed. However, that contention is meritless. Since on the date of filing the suit, the plaintiffs were not in possession of the suit property and as such, the Lower Appellate Court has rightly dismissed the suit of the plaintiffs. The learned Lower Appellate Court has rightly held that Haryana government is necessary party. There is nothing on file to show that findings recorded by the Lower Appellate Court are perverse or are the result of misreading and misinterpreting the evidence.

No other point has been argued before me.

In view of the above, the present appeal is without any merit and the same stands dismissed.

MAY 04, 2015

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(K. C. PURI)
JUDGE