

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

Regular Second Appeal No.1834 of 2014 (O&M)

Date of decision: 2.7.2015

Hans Raj (Marathi)

... Appellant

Versus

Rajesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Dr.Anmol Rattan Sidhu, Sr.Advocate with
Mr.Rajesh Narang, Advocate
for the appellant.

Mr.Anil Kshetarpal, Sr. Advocate with
Mr.Piyush Aggarwal, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

Defendant # 3 is in second appeal. The brief facts are: The plaintiff filed a declaratory suit against the order dated 15th December, 2008 whereby the Assistant Collector, 1st Grade, Fatehabad corrected the entries in the Khasra Girdawari in respect of the suit land and ordered the name of defendant # 1 be recorded in the column of cultivation/possession in the girdawari. In compliance of the order, rapat # 134 dated 31st December, 2009 has been entered incorporating the name of defendant # 3.

The plaintiff is tenant over the suit land as *mujara gair marusi* on 1/3rd *batai* under the land owners namely Pana, Khema, Ram

Bhagat etc. and his name was recorded in the column of cultivation before the impugned order was passed on 15th December, 2008 and till the entry was effected in the Khasra Girdawari in December, 2009 in favour of defendant # 3. The plaintiff admits that he lost possession in the aftermath of the Full Bench decision of this Court in **Jai Singh & Others v. State of Haryana**; (2003) 134 PLR 658 where the vires of the Punjab Village Common Lands (Regulation) Haryana Amendment Act 1991 were under challenge, this Court had directed the revenue authorities to re-enter the land in the name of *Jumla Mushtarka Malkan* which was previously mutated wrongly in the name of the Gram Panchayat. The plaintiff had agitated the exclusion of his name in the revenue record by requesting the Tehsildar to set aside the mutation in favour of Gram Panchayat but the same was not done. He filed an application to this effect on 6th July, 2007 which was marked to Halqa Patwari for further action but no order was passed on the application. He alleges that Dura Ram was the defendant in civil suit # 1533 of 1995 filed by the plaintiff against Dura Ram etc. for permanent injunction which was decreed in his favour on 31st October, 1998 by the Additional Civil Judge, Senior Division, Fatehabad whereby the respondents were restrained from interfering in the peaceful possession of the plaintiff over the suit land. In that suit, defendant # 3 was arrayed as defendant at serial # 9 and he too was restrained from interfering in the peaceful possession of the plaintiff over the suit land. Disputes arose which could not be resolved by themselves which brought the plaintiff to the civil court in the present suit impugning the decision of the Assistant Collector, 1st Grade passed in the year 2008. The defendants urged that the plaintiff-

tenant was ejected from the land but his possession was restored by order of this Court. However, since in the meanwhile Gram Panchayat had leased out the suit land for 4 years to one Ajit Singh, it was only after the expiry of the lease period that the possession was handed back to the Gram Panchayat who in turn returned it to the plaintiff.

The trial court has reasoned that when the revenue entries were long standing in the name of the plaintiff then it was presumed to be continuing unless there is something to justify the change. Indisputably, the revenue entries prior to the year 2008 stood in the name of the plaintiff. It is also not in dispute that when the order of ejectment was passed against the plaintiff, he filed a writ petition in the High Court and the Court not only set aside the impugned order of ejectment; [Ex.PB] but also directed the possession of the suit property be restored to the father of the plaintiff, meaning thereby that prior to the year 1995, it was the plaintiff's father who was in possession of the suit land. Even the subsequent entries in the moot Jamabandi, one of which is Ex.P1, also depicts the possession of the suit land with the plaintiff. This effectively falsified the version of defendant # 3 that he has been in possession over the suit land for more than 25 years. Surprisingly, a simple request for correction in the revenue record addressed to the Tehsildar had led to the Assistant Collector, 1st Grade to order change of entry in favour of defendant # 3 was alas accepted by the stroke of the pen disregarding the fact that the Jamabandi Ex.P1 shows that cultivating possession of the suit land has been recorded in the name of the plaintiff. The court questioned as to on what basis, the Jamabandi entries have been changed is unclear as it has not been spelled out on official papers. How did

defendant # 3 enter possession remains a mystery. Besides, the plaintiff has already obtained a decree of permanent injunction against defendant # 3 Ex.P6. The court noticed the findings of the civil court in the previous suit proceeding and held: -

“(i) The plaintiff cannot be held to be trespasser. His possession is legal and valid as that of a tenant as is proved from the revenue entries. Hence, the plaintiff has right to protect his possession for which purpose, he is entitled to the relief of permanent injunction as prayed for. Consequently the issues under consideration are decided in favour of the plaintiff and against the defendants.

(ii) As a consequence of above discussion, the suit of the plaintiff is decreed with costs. The defendants are, hereby, restrained from interfering in the peaceful possession of the plaintiff over the suit land except in due course of law.”

In view the above directions in the judgment and for the several other reasons assigned, the suit was decreed and the impugned order dated 15th December, 2008 was held illegal, null and void and so also rapat # 134 dated 31st December, 2008 incorporating the recorded entry on the basis of the decree. As a result, defendant # 3 was restrained from interfering in the peaceful possession of the plaintiff over suit land except in due course of law. Finality is attached to the judgment.

Aggrieved by the order, the tenant-defendants preferred an appeal to the learned Additional District Judge, Fatehabad who has by a well reasoned order dismissed the appeal and affirmed the findings of the trial court and held for a variety of reasons that indisputably the possession of the suit property remained with plaintiff Rajesh Kumar which position stands approved in the judgment of the earlier suit brought by the plaintiff

for permanent injunction restraining defendant # 3 from interfering in his possession over the suit land. The appeal court re-appreciated the evidence and read the Jamabandies and found that originally the plaintiff was shown in the revenue record in possession over the suit property. Had defendant # 3 been in possession of the property for 25 years as claimed, he would have filed an application for correction of the Khasra Girdawari much prior to the filing of the present suit or the previous suit. Moreover, defendant # 3 has not stated anywhere as to when he came into possession of the suit property, nor is there an iota of evidence produced by defendant # 3 on record to support and prove his cultivating possession of the suit property and, therefore, the appeal court in coming to the conclusion that plaintiff was not in possession of suit property was a right decision and in this the appeal court, to my mind, committed no error of fact or any material irregularity in exercise of jurisdiction in concluding the case in favour of the plaintiff vide judgment and decree dated 1st February, 2014 that the defendants' appeal deserves to be dismissed.

I have no reason to interfere in the concurrent findings of fact recorded by both the courts below on the issue of possession and in whom it rested after appreciating the oral and documentary evidence on record. I find no question of law involved or arising, much less a substantial one, in this appeal worth consideration in second appeal.

Hence, the appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

July 2, 2015