

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

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**R.S.A No. 517 of 2015 (O&M)
Decided on : February 12, 2015**

Boota Singh (deceased) through LRs ... Appellant

Versus

Harbhajan Singh & Ors. ... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. K.S.Rekhi, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

Judgment/decreed dated 07.11.2014 of learned Additional District Judge, Amritsar ('first appellate Court' – for short) affirming the judgment/decreed dated 15.11.2013 of learned Civil Judge (Junior Division), Amritsar, ('trial Court' – for short) decreeing the plaintiffs' (respondents herein) suit for declaration that they are owners in possession of the suit land, is under challenge in this regular second appeal brought by the defeated–defendant.

I have heard learned counsel for the appellant.

It is argued by the learned counsel for the appellant that there is sufficient evidence to show that the possession of land in question was surrendered by the plaintiffs to the defendants-appellants and since then he is in possession thereof. As such, according to the learned counsel, suit for declaration is not maintainable in terms of Section 45 of the Punjab Land Revenue Act, 1887, and instead a suit for possession ought to have been

filed. He in support of his contention relies upon **Roop Ram Vs. Mai Sukh, 1993(2) RCR (Civil) 275.**

Nothing more has been urged.

Case of the plaintiffs' before the Courts below was that they are owners and have been in possession of the suit property since the days of their predecessors in interest and the entries in jamabandi for the year 2006-07 were changed without any basis. This change according to them continued even thereafter and the revenue authorities decided the matter against them on the basis of an inspection report which could not be done.

The suit was contested by the defendant-appellant by filing a written statement wherein all the allegations of the plaint were denied and it was stated that the defendants are in exclusive possession of the suit property as they used to tether their cattle in a part of the suit land and that the revenue authorities have rightly held the defendants/appellants to be owners in possession of the suit property.

On completion of pleadings, issues were framed. Learned trial Court received evidence and afforded an opportunity of hearing to the parties. Having reached a conclusion that the plaintiffs/respondents were able to prove their plea, learned trial Court decreed their suit vide judgment/decreed dated 15.11.2013 which, as aforesaid, has been upheld by the learned first appellate Court vide judgment/decreed dated 07.11.2014.

A perusal of the impugned judgment would reveal that the learned courts below have found as a matter of fact that since 1971-72 till 2006-07, all the jamabandies depict the plaintiffs-respondents to be owners

in possession of the land in dispute. The entries in jamabandies have been changed from 2006-07 onwards. It is also noted by the learned Courts below that the defendants-appellants have not been able to show how and when they entered possession of the suit property and on what basis the entries with regard to ownership and possession of the plaintiffs-respondents were changed.

During the course of hearing, learned counsel for the defendants/appellants though has insisted that possession of the suit property is with the defendants/appellants and that it was surrendered in their favour by the plaintiffs/respondents, but he has not been able to refer to any evidence, whatsoever, to substantiate this plea. To a specific question whether a notice was served upon plaintiffs-respondents before effecting change in the entries in jamabandi he could not answer in the affirmative and has not been able to show on what basis entries in jamabandies/khasra girdawaries are changed. Learned counsel for the defendant-appellant has exhibited his inability to answer in affirmative the question with regard to issuance of notice to the plaintiffs-respondents before effecting the change.

It is well settled that entries in jamabandi carry a presumption of truth and such entries can be changed only after notice to the person in whose favour such entries are. From the circumstances appearing on record it cannot be inferred that the plaintiffs/respondents were served before effecting change in khasra girdawaries/jamabandies and, as aforesaid, learned counsel for the defendants/appellants has not been able to show any

evidence to show that the possession of the suit property was surrendered in favour of the defendants-appellants or that they are in possession of the suit property.

Judgment relied upon by the learned counsel for the appellant is of no help to the plea put forth on his behalf in the given circumstances.

In view of the above, coupled with the fact that the appeal is not shown to involve any substantial question of law, I regret my disinclination to interfere with the concurrent findings of fact recorded by the Court below, while leaving the parties to bear their own costs.

February 12, 2015
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[Mahavir S. Chauhan]
Judge