

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

RSA No. 4711 of 2014 (O&M)
Date of decision: August 13, 2015

Ram Dass

...Appellant

Versus

Ramesh Mohan

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers 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?**

Present: Mr. Pritam Saini, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. As passionate as the arguments could be, the bottom line is, whether the appeal projects any substantial questions of law. The suit was filed by the owner of the property for injunction against the defendant claiming that he was trespasser and relied on khasra girdawari to prove his possession and ownership. The defendant stated that he was a tenant for the last 25 years and relied on some payments of revenue as being in cultivating possession of the property. The defendant also produced photographs alleged to have been taken at the property showing him to be in possession. The trial court found the plaintiff to be in possession, rejected the defence and granted the relief of injunction.

2. In the appellate court, the court re-stated the law and held that there was a presumption of truth relating to entries brought through khasra girdawaris and if there was any inconsistency between khasra girdawaris and *nehari* girdawaris where a person other than the person shown to be in

possession of khasra girdawari was shown to have paid the revenue for water, the entries in khasra girdawaris still obtain primacy. This was the law stated in the Birbal Versus Shanker Dev 2001 (3) RCR (Civil) 314. The Court also held that it was not possible to rely on the evidence of photographer who admitted that he did not know for which land these photographs related. He held the possession could not be determined on the basis of the photographs.

3. The issue of possession of an agricultural land shall be examined primarily from the revenue records and if the records do not exist, there will be a scope for examination of oral evidence. Learned counsel appearing on behalf of the appellant wants to say that he applied for rectification of the khasra girdawaris before the revenue authorities and though it was ordered to be corrected, it was modified in the appeal to the benefit of the landowner and there is still a fresh consideration directed by the higher authorities and, therefore, the matter is still kept for consideration before the authorities. According to him, the entries in khasra girdawaris themselves are under challenge now and it cannot be acted upon for the benefit of the landowner against the oral evidence produced by the defendant. The counsel would also argue that even now after obtaining a decree, the respondent has moved an application under Order 21 Rule 32 CPC complaining of disobedience which means he is not in possession and he had filed a false suit claiming himself to be in possession.

4. It will be possible for me to make an intervention if there is a perverse approach to appraisal of facts of the courts below which can be a substantial question of law for consideration. The lower appellate court has considered every aspect of possession that is now being canvassed before

me. He has stated the law correctly by applying the facts for the legal determination. He has given also a reason why photographs cannot be relied upon. If the modification or rectification of the khasra girdawaris have been attempted by the defendant even prior to institution of the the suit and the entries had been modified by the first authority, the fact that the proceedings were still pending could have lent strength to the contention of the defendant to say that the plaintiff cannot take advantage of some error. However, if the attempt of the defendant itself was to alter the entries subsequent to the institution of the suit by the plaintiff, it would only show that the defendant was now trying to get over a serious obstacle which would otherwise formidably deny to him a contention which he makes now by a reference to the fact that the entries has not become final. If on the date of the suit and two decades earlier, the plaintiff had been shown to be in possession as a owner, the issue for consideration of whether the plaintiff had granted the property on lease must depend on very strong evidence. The strongest evidence would have been payment of *batai* and the persons who were associated in such payments and persons who could show that the plaintiff had received the rent from the tenant admitting the defendant as tenant. It will be dangerous for any court to act on photographs or entries in *nehari*. There could be several circumstances when a landowner may himself have sent his servant to pay revenue or some persons may volunteer to pay revenue as person taking care, but a lease involves a transfer of interest in the property. That interest cannot be obtained merely by some person entering upon the land and taking the photographs of himself on the land. Again a person who pays the nehri charges can not claim possession of the property. The documents relied on by the defendant are too fragile in

character that could never have defeated the evidentiary value of the documents relied on by the plaintiff. I cannot also take the fact that the plaintiff has filed an application under Order 21 Rule 32 CPC, after the decree is passed, to be very significant. A defiant defendant who could create problems inspite of a decree could only be cast off from the land by a coercive process. If the plaintiff adopts what the law permits him he should do so, I will draw no adverse inference against the decree holder for such a course of action.

5. I decline to make interfere with the impugned judgments and decrees, as no substantial questions of law are involved in the appeal. Dismissed.

August 13, 2015
prem

(K.KANNAN)
JUDGE