

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

**RSA No.752 of 2014 (O&M)**  
**Date of Decision: February 05, 2015**

**Joginder Singh**

..Appellant(s)

**Versus**

**Shambhu Singh & others**

...Respondent(s)

**CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest? Yes

Present: Mr. Saurabh Bajaj, Advocate  
for the appellant.

Mr. Jorawar Singh, Advocate  
for respondent no.3.

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**ANITA CHAUDHRY, J.**

1. The instant regular second appeal is at the instance of the plaintiff against the judgments passed by both the Courts below in a suit for declaration, asserting his title on the suit property by adverse possession. A prayer for injunction was also made. Aggrieved by the denial of the relief by the lower Court, the plaintiff filed an appeal but remained unsuccessful. Now he has approached this Court under Section 100 of the Code of Civil Procedure.

2. A suit for declaration and injunction was filed by the plaintiff with respect to 7 Kanals of land, situated in

Village Janesaron in District Karnal. The plaintiff relied upon the entries of Jamabandi where his possession was recorded as Gair Marusi, Bila Lagan Bawaja Nazayaj Kabza. The plaintiff's case was that he had occupied the suit land on 01.12.1989 and was cultivating the same without payment of any rent/batai/lagan to defendant no.1 or any other person and had spent a huge amount on the boring and installing of an engine and since his possession was continuing without any interruption and was open, hostile and continuous to the knowledge of defendant no.1. He had become owner by adverse possession. It was pleaded that defendants tried to dispossess him. The plaintiff also challenged the sale deed dated 27.09.2004, vide which the land had been sold to defendant no.3.

3. Defendants no.1 & 2 were proceeded ex parte. The only contesting defendant no.3 took more than one preliminary objections on merits specifically the plea of maintainability. It was pleaded that he had acquired title to the land by virtue of the sale deed dated 27.09.2004 executed by defendant no.1 through his GPA-defendant no.2 for a sale consideration of Rs.6,50,000/-. It was pleaded that possession was handed over to him at the time of execution of the sale deed. Plea was raised that the land was allotted to defendant no.1 and entry in this regard was made in the revenue record vide Rapat dated 02.09.1984 and the mutation was entered and sanctioned. It was denied that the

possession of the plaintiff was to his notice or knowledge. It was pleaded that the entries had been made behind his back.

4. The plaintiff did not file any replication. The parties went to trial on the following issues:-

1. *Whether the plaintiff is entitled to a decree for declaration with consequential relief of permanent injunction and further declare the sale deed no.1811/1 dated 27.09.2004, illegal, null and void and not binding upon the rights of the plaintiff as alleged? OPP*
2. *If issue no.1 is proved, whether the plaintiff is entitled to relevant injunction as prayed for? OPP*
3. *Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPP*
4. *Whether the suit is not maintainable in its present form? OPC*
5. *Whether the plaintiff is stopped to file and maintain the present suit by his own act and conduct: OPD*
6. *Whether the suit of the plaintiff is bad for misjoinder and non-joinder of necessary parties? OPD*
7. *Whether the Civil Court has no jurisdiction to entertain and try the present suit? OPD*
8. *Whether the present suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
9. *Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the Court? OPC*
10. *Whether the suit is hopelessly time barred? OPD*
11. *Relief.*

5. To substantiate their respective stands, the plaintiff examined himself and tendered some documents. Defendant no.3 appeared as the sole witness and tendered some documents.

6. After hearing both the sides and on perusal of the record, the learned lower Court dismissed the suit of the plaintiff. The appeal filed by the plaintiff was also dismissed.

7. Feeling aggrieved by the judgments of both the Courts, the plaintiff is asserting his right and praying for a declaration and an injunction in his favour.

8. Having heard both the learned counsels at length and after going through the documents appended with the appeal, I am of the considered opinion that no interference is warranted while exercising jurisdiction under Section 100 of the Civil Procedure Code because no question of law much less substantive question of law is found to be involved in this case, reasons which I would be subsequently referring to:

9. The plaintiff's assertion was that he had occupied the suit land on 01.12.1989 and an entry in this regard was made in the column of cultivation and he was shown as Gair Marusi, Bila Lagan, Bawaja, Nazayaj Kabza and his cultivating possession had ripened and he had become the owner by adverse possession. The plaintiff had relied upon the Jamabandis for the year 1988-1989 and the later Khasra Girdawaris. The plaintiff also laid challenge to the sale deed dated 27.09.2004 executed by defendant no.1 in favour of

defendant no.3. Defendant no.3 asserted his possession and tendered copies of the Jamabandi for the year 1988-1989 and subsequent Jamabandis and copy of mutation no. 1489 and copy of the Roznamcha and the sale deed in his favour to fortify his stand. The learned lower Court in para no. 15 of the judgment referred to the questions of law which had arisen for determination: whether he was in uninterrupted possession since 1989 and whether the fact was known to the owner and whether his possession was open and undisturbed. It was held that he had paid no rent, therefore, the relationship of landlord and tenant did not exist. The lower Court noted that the revenue entries reflected the possession of the plaintiff in the column of the possession but in 1988-1989, the Jamabandi Ex.D1 showed the possession of Sardha and later in the Jamabandi for the year 1993-1994, the entry again showed the name of the plaintiff. The learned lower Court made the following observations in para no. 17 which read as under:

*"Harking back, no doubt that in the revenue entries in the name of the plaintiff are reflected in the possessory column. The defendant has placed on record the Jamabandi Ex.D1 of the year 1988-89 wherein Sardha Ram was shown in possession of the suit land. Thereafter, in the jamabandi for the year 1993-94 the entry in the possessory column came into the name of the plaintiff. There is no proof at all on record as to how the plaintiff came into*

*the possession of the suit land in the capacity of tenant in the year 1989. In the absence of any such document, it is reasonable to infer that an entry in the revenue record was made by the Patwari un-authorizedly. Before making any change in the existing entry at the time of harvest inspection and notify in writing the person or persons likely to be adversely affected by such a change of the entries. Not only this, the changes which are to be made have to be attested by the Lamberdar or the Panch of the village. In case of non-compliance entries are made in violation of the instructions issued by the Financial Commissioner, such entry is to be treated as null & void at the time of attestation of jamabandi or even earlier. In this regard I am fortified by **Gurcharan Singh Vs. Kehar Singh, 1996, PLJ (P&H) 327.**"*

10. The lower Court elaborately dealt with the instructions issued by the Financial Commissioner relating to the manner in which the changes are to be brought about by the revenue officials and it noted that no notice was given by the Patwari to the land owners and the entry in favour of the plaintiff was doubtful and it arrived at a finding that the plaintiff had failed to establish that the entries in the revenue record were as per the actual position existing on the spot.

11. In para no.22, learned lower Court noted the following:-

*"Learned counsel for the plaintiff also submitted that the party in possession of the*

*suit land cannot be evicted forcibly even by the true owner. However, this Court is of the view that no injunction can be granted against the true owner. Further the possession of the plaintiff can be protected only if he succeeds to prove his actual possession over the suit land. Once, the revenue entries in possessory column are doubtful, no protection can be given to the plaintiff on the basis of same."*

12. Referring to the maintainability of the suit, learned lower Court had observed that the plaintiff cannot take the plea of adverse possession as it was a defence which was available to the defendant. The plaintiff was non-suited by the lower Court.

13. The learned appellate Court also affirmed the findings.

14. The land had been allotted to Shambu Singh on 02.09.1984 and entry in this regard was made which was proved by the defendant. At that point of time, Sardha Ram son of Nihala was shown to be Gair Marusi. In column no. 9, the entries read Lagan Nadarad Bawaja Nazayaj Kabza. Subsequently, the entries were changed in favour of the plaintiff. No change was made in column no.11. The learned lower Court had rightly observed that the entries were doubtful. The Hon'ble Supreme Court in Baleshwar Tiwari (Dead) by LRs. and others Vs. Sheo Jatan Tiwary and others AIR 1997 SC, 2089 case had noted that:-

*"Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat always regards the lands he ploughs, as his dominion and generally obeys, with moral fiber and command of the intermediary so long as his possession is not disturbed. Therefore, creations of records is a camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills."*

15. It appears that the entries were made in the revenue record un-authorizedly and without following the due process laid down by the Financial Commissioner and no presumption could be attached to the entries. The plaintiff was unable to produce even a single person to support his claim regarding possession. The plaintiff was claiming his open and continuous possession which he was unable to prove.

16. As a last resort, an attempt was made to urge that since the plaintiff was in possession, he could be evicted only by following the due process of law and support was sought from ***Karthiyayani Amma Vs. Govindan 1980 AIR (Kerala) 224 Rame Gowda (D) by LRs. Vs. Mr. Varadappa Naidu (D) by LRs and anr. 2004(1) SCC 469, Gone Rajamma Vs. Chennamaneni Mohan Rao 2010(3) CCC 336 and Sampangiramaiah Vs. Venkatamma 2002(2) ICC 128.***

17. As already observed above, presumption of truth is attached to the entries in the revenue record but where an entry appears without any reason and contradicts the earlier and subsequent entry then such entries have to be ignored. The plaintiff had failed to prove his possession and was not entitled to the decree of injunction as well. The appellant could not seek a declaration that his adverse possession had matured into ownership because such plea is available only to the defendant. This issue has been examined on number of occasions.

18. On a consideration of the various aspects of the case, no fault can be found in the judgments and decree. The appeal against the concurrent finding of two Courts below are based upon proper appreciation of material on record. Therefore, there are no grounds to interfere. The appeal is dismissed.

**(ANITA CHAUDHRY)**  
**JUDGE**

February 05, 2015  
sunil