

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

RSA No.1651 of 1987

Date of Decision:01.06.2016

Rajbir and others

.....Appellants

Vs

Teka (deceased) through LRs and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. U.K. Agnihotri, Advocate
for the appellants.

Mr. Jatin Hans, Advocate
for LRs of respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Defendants No.3, 4, 5, 6, 7 and 8 have preferred this appeal against the judgment and decree dated 24.01.1987 passed by Additional District Judge, Bhiwani vide which judgment and decree dated 29.08.1985 passed by Senior Sub Judge, Biwani was upheld.

[2]. Plaintiff Teka through his general power of attorney filed a suit for permanent injunction seeking restraint against the defendants from interfering in his possession over 63 kanals, 8 marlas of land. Plaintiff alleged that he was in possession of the suit land as tenant on payment of 1/3rd batai under the

defendants for the last more than 35 to 40 years. Plaintiff alleged that the defendants were head strong persons and in connivance with revenue authority, they had got wrong khasra girdawari entered in the revenue record. On coming to know about the wrong entries, plaintiff moved an application for correction of khasra girdawari before the Sub Divisional Officer (Civil) on 26.03.1982. Plaintiff further claimed that on the basis of wrong entries in the khasra girdawari, defendants threatened to dispossess the plaintiff and on proclaiming by the defendants, plaintiff filed the suit for permanent injunction.

[3]. The suit was contested by defendants No.1, 3, 4, 6 to 8 and the claim of the plaintiff was denied. Defendants claimed that the plaintiff had at one point of time got his name entered in the revenue record in collusion with the revenue officials. He had never cultivated the land as tenant. A wrong order regarding correction of khasra girdawari was obtained by the plaintiff and the same has since been set aside by the Appellate Authority. It was alleged that suit was not maintainable.

[4]. On completion of pleadings of the parties, the parties went to trial on the following issues:-

“1. Whether the plaintiff is in cultivating possession of the suit land as a tenant gair mourusi? OPP

2. Whether the plaintiff has no cause of action

against the defendants? OPD

3. Whether the plaintiff has no locus standi to file the present suit? OPD

4. Whether the suit is bad for multifareousness? OPD

5. Whether the suit is not maintainable in the present form? OPD

6. Whether less court fee has been affixed on the plaint? OPD

7. Whether the plaint has not been properly verified? If so to what effect? OPD

8. Whether the defendant is entitled to special costs under Section 35-A CPC? If so how much? OPD

9. Relief.”

[5]. Both the parties led their respective evidence. Trial Court decreed the suit vide judgment and decree dated 29.08.1985 and the Lower Appellate Court vide judgment and decree dated 24.01.1987 upheld the judgment and decree of the trial Court. That is how the present regular second appeal came to be filed in this Court.

[6]. Despite opportunities were granted to the appellants on 15.07.2010, 19.10.2011 and 09.12.2011, no substantial questions of law were formulated and brought on record by the appellants.

In view of Full Bench judgment of this Court in **Ganpat**

Vs. Smt. Ram Devi and others 1977, PLR Page 1, framing of

question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[7]. I have heard learned counsel for the parties and have also perused the record.

[8]. Following substantial questions of law can be considered for disposal of the appeal:-

"1. Whether revenue official is bound to issue prior notice to the aggrieved party before changing the khasra girdawari and making entry in favour of opposite party?"

2. Whether in case of joint tenancy, the relinquishment by one of the tenant would jeopardise the interest of remaining joint tenant?"

3. Whether presumption of continuity of

possession would remain intact despite change of khasra girdawari illegally recorded in favour of opposite party?”

[9]. Revenue record viz. khasra girdawari for the period Kharif 1954 to Rabi 1958 (Ex.P7), khasra girdawari for the period Kharif 1958 to Rabi 1962 (Ex.P6) and copy of *jamabandi* for the year 1957-58 would show that the plaintiff was in possession of the land in question on 1/3rd batai i.e. land measuring 33 bighas, 13 biswas comprised in khasra No.542. Khasra girdawari Ex.P7 for the period Kharif 1954 to Rabi 1958 would show that the plaintiff had entered into possession of the suit land as tenant in Kharif 1956. As per *jamabandi* for the year 1966-67 (Ex.P5), the suit land was shown in possession of the plaintiff along with his brother Gharsi as tenants in land measuring 33 bighas, 13 biswas in khasra No.542. A rapat roznamcha dated 16.10.1974 (EX.D1) was entered in which Gharsi brother of the plaintiff had given up the possession of his half share in the suit land/joint tenancy in favour of Chandia-defendant No.1. With the relinquishment of the half share in joint tenancy in favour of Chandia, the land was shown to be in possession of said Chandia to the extent of half share and half share remained with the plaintiff. Khasra girdawari for Rabi 1971 was changed on the basis of attestation made by one Nathugir Lambardar, thereby, recording the possession in favour of

owner and the said entry was incorporated in the jamabandi for the year 1971-72. Resultantly, Chandia i.e. one of the owner came to be recorded as in possession of the entire land. The suit land was allotted during consolidation in lieu of land measuring 33 bighas 13 biswas comprised in khasra No.542. [10]. For proving the identity of land, Khatoni pamaish Ex.D2 was produced on record by the defendants in order to connect with 57 kanals 12 marlas to show identity of the land and allotment thereby after consolidation. Chandia was recorded in possession as co-sharer from Kharif 1973 to Rabi 1980. Part of the suit land was sold by its owners to Rajbir, Hawa Singh and Suresh Kumar and other part of the land was sold to Rati Ram, Lok Ram and Raje Ram. In this way, their names were also recorded as owners of the part of the suit land as per *jamabandi* for the year 1980-81. The land so purchased by them came to be recorded in their possession in Kharif 1981 but khasra girdawari for Rabi 1982 was changed in favour of plaintiff on the basis of order passed by the revenue official in correction proceedings. However, the said order was challenged in appeal, wherein the same was set aside on the ground that Sub Divisional Officer (Civil) had no jurisdiction to entertain the application for correction of khasra girdawari and the case was remanded back to Assistant Collector, Second Grade, Bhiwani

for decision.

[11]. Assistant Collector, Second Grade, Bhiwani decided the application and held the possession of the plaintiff on the part of the suit land i.e. rectangle No.224, killa No.4/2 North, killa No.5/2 North, 2 kanals 18 marlas in each of these khasra number and dismissed the application qua rest of the land. Plaintiff had not filed any application for correction of khasra girdawari in respect of 2 killa numbers i.e. land comprised in rectangle No.215, killa Nos.22/2 and 23/1 but the khasra girdawaries of these killa numbers were also corrected in favour of the plaintiff and continued to be in the name of the plaintiff. Plaintiff asserted that according to latest revenue record, plaintiff was in possession of the land comprised in rectangle No.215, killa Nos.22/2 and 23/1 and land comprised in rectangle No.224, killa No.4/2 North (2 kanals 18 marlas), killa No.5/2 North (2 kanals 18 marlas).

[12]. Plaintiff also asserted that he had filed an appeal against the order passed by Assistant Collector, Second Grade but the same was dismissed by the Assistant Collector, First Grade. Thereafter, he had filed a revision petition against the order of Assistant Collector, First Grade. The interim order passed by Revisional Court was also exhibited on record as Ex.P15 and Ex.P17. It was also asserted that correction

proceedings of khasra girdwari be not treated as final in view of pendency of revision at the relevant time. Plaintiff was shown to be in possession of the land but khasra girdawari had been changed in Rabi 1971 without notice to him. The entries made from Rabi 1971 onwards without notice to the plaintiff was unauthorized and could not have been read against the plaintiff.

[13]. Defendants by examining Chandia as DW 1, Daya Ram as DW2 and Mukesh Chand, Patwari as DW 3 submitted that plaintiff had no concern with the suit land. Revenue record prior to rapat roznamcha Ex.D1 would show that the plaintiff along with his brother Gharsi were in joint tenancy over the land in question. It was only after relinquishment of half share by Gharsi, Chandia was recorded to be co-tenant in the land in question. Mukesh Chand, Patwari, DW3 had only produced copy of rapat roznamcha Ex.D1 and had also stated that rapat roznamcha for the year 1970-71 was not available. In his cross-examination, he admitted that he cannot say whether any notice regarding change of khasra girdawari was given to the plaintiff. The official had further stated that no record was available with him in respect of issuance of such notice. Admittedly, defendant No.1-Chandia was not in possession of the suit land at the time of filing of the suit. He did not state that he was in possession of at least 2 kanals of suit land which he had not sold to anyone.

[14]. Daya Ram-DW2 was resident of another village and was father of some of the vendees. Defendants did not produce any neighbour of the suit land or any person from the village where the suit land was situated in order to show that any of the defendants were actually in possession of any part of the suit land. The statement of Chandia that he had given the suit land on payment of 1/3rd batai to Gharsi and the plaintiff had no concern with the suit land at any time as the same was contradicted in terms of revenue record from Kharif 1954 till the year 1966-67. Rapat Roznamcha Ex.D1 would suggest that Gharsi had given up possession of his half share in joint tenancy in favour of Chandia. From above documents, it could not have been presumed that the plaintiff had ever left his possession over the part of the land.

[15]. Relinquishment by one of the co-tenant would not entail relinquishment of entire land under tenancy. The remaining co-tenant would remain in possession of land under tenancy or co-tenancy. Concept of co-sharership would apply to such a situation and Chandia could only get possession of half of the tenanted land so relinquished by Gharsi. After partition, the relinquishment by the co-tenant would not in any manner jeopardise the interest of remaining tenant i.e. the plaintiff.

[16]. Having perused the pleadings and material on record, I

am of the considered view that relinquishment even if made by co-tenant i.e. Gharsi in favour of Chandia to the extent of half share of joint tenancy would not in any manner jeopardise the interest of the remaining joint tenant i.e. the plaintiff. The owner i.e. Chandia could get physical possession of the land so relinquished in his favour only after partition with the co-tenant. By virtue of said relinquishment, the share of the plaintiff in joint tenancy would not be extinguished by any operation of law. As per revenue record, plaintiff continued to be in possession prior to alleged change of khasra girdawari that was apparently without notice to the plaintiff and as such that was a nullity. The correction of khasra girdawari without notice to the plaintiff was a nullity. The change of khasra girdawari on that premise was without any authority of law and the plaintiff would be presumed to be in cultivating possession as was depicted prior to such change. Any change by the revenue officials in revenue record without notice to the aggrieved party was squarely hit by the instructions issued by Financial Commissioner in exercise of general power of superintendence and control over all the revenue officers. Violation of such instructions would render the change made in the revenue record as a nullity. Reference can be made to **Amal Kumar and others Vs. Bhupinder Singh, 1976 PLJ 26 .**

[17]. It is also a settled principle of law that the entries made in the subsequent *jamabandies* which were in consistent with previous revenue record and if no explanation is forthcoming, then subsequent *jamabandies* cannot be relied upon. The change not reported to the aggrieved party is violative of the instructions of the Financial Commissioner and would be treated as nullity.

[18]. In view of instructions issued by the Financial Commissioner in exercise of power of superintendence and control, the question No.1 is decided accordingly and the change so effected vide rapat roznamcha of the year 1971 was a nullity. As discussed above, the second question has to be decided, even, if a joint tenant relinquishes his share of tenancy that would not itself jeopardise the interest of remaining co-tenant in the land under joint tenancy. In the absence of adherence to the instructions of the Financial Commissioner and issuance of notice to the aggrieved party, the change so recorded in the revenue record would bring the presumption of continuity of possession in favour of the person in whose favour earlier entries were in existence. In view of aforesaid, all the three questions are to be answered accordingly.

[19]. Having considered the aforesaid facts, I am of the view that no indulgence can be granted in the findings and facts

recorded by both the Courts. The appeal is found to be totally bereft of merit and the same is accordingly dismissed.

01.06.2016
Prince

(RAJ MOHAN SINGH)
JUDGE