

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

**Regular Second Appeal No.1096 of 1988 (O&M)
Date of Decision: December 14, 2016.**

State of Punjab

.....APPELLANT(s).

VERSUS

Manohar Singh and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. L.C. Aggarwal, Asstt. Advocate General, Punjab
for the appellant (s).

Mr. Neeraj Madan, Advocate
for the respondents.

SURINDER GUPTA, J.

Respondents-plaintiffs filed suit seeking the relief of
declaration as follows:-

(i) That they are not liable to pay 1/3rd of the produce in respect of
suit land situated in village Chak Sarkar Mahaji Parbhat Singh Wala, Tehsil
Fazilka as fully described in the head note of the plaint. Rather, they are
liable to pay nine times of the land revenue.

(ii) The defendants be restrained from realising 1/3rd share of the
produce in respect of suit land by coercive methods.

2. The case of the plaintiffs, in brief, is that the suit land is owned
by State of Punjab and is under cultivation of plaintiffs. It is situated at Indo-
Pak Boarder and reclaimed by the plaintiffs after removing the bushes. In

the revenue record, plaintiffs are recorded as trespassers in possession of the suit land and not as tenant. Plaintiffs have alleged that the owners i.e. defendants are entitled to recover rent or share of produce in cash or kind as described in column No.9 of the jamabandi. As there is no description of rent in column No.9 of the jamabandi, the defendants have no legal right to recover 1/3rd share of produce from the plaintiffs. In the earlier suit filed by the plaintiffs, defendants had alleged that plaintiffs are trespassers and not tenant over the suit land. In case, the defendants admit the plaintiffs as its tenant, then they are ready and willing to pay the customary rent applicable in the locality.

3. The defendants contested the claim of the plaintiffs inter-alia pleading that the same is barred under Section 158 of Punjab Land Revenue Act. The suit is not maintainable as the plaintiffs are in unauthorised possession and occupation of the suit land. The land under the possession of both the plaintiffs is different and cause of action is also different. Plaintiff Manohar Singh is in possession of land measuring 56 kanals 8 marlas, out of suit land by specific khasra numbers as follows:-

“Khatauni No.5M killa No.15 min(2-0) 16(8-0), 25/1(4-0), 25/2(3-8); Khatauni No.6M, killa No.10min(1-0) 11min(2-13), 12(4-12), 19 (2-0) 20(8-0), Khatauni No.7M killa No.1(5-10), Khatauni No.8M killa No.5(7-8).”

Plaintiff Balbir Singh is in possession of 29 kanals 13 marlas of land as per khasra numbers, which have been described in the written statement, as follows:-

“Khatauni No.2M/9(1-10), 11(1-12), 12(7-18), 19(8-0), 21(8-0), Khatauni No.3M/25(2-13).”

The amount equivalent to 1/3rd share of produce was being

recovered from the plaintiffs for their unauthorised occupation of the suit land, which was assessed by the Collector, Ferozepur and plaintiffs paid ₹2,900/- out of total amount of ₹7,849.61p. As the possession of the plaintiffs was unauthorised, the collector was competent to assess the amount recoverable from the plaintiff. It was denied that any coercive method was adopted to recover the amount due to the plaintiffs.

5. Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiff is entitled to the declaration prayed for? OPP
- (2) Whether the plaintiff is entitled to the injunction prayed for? OPP
- (3) Whether the Court has no jurisdiction to try the suit? OPD
- (4) Whether the suit is barred by the principle of res judicata? OPD
- (5) Whether the suit is not maintainable? OPD
- (6) Relief.

6. Learned Additional Senior Sub Judge, Ferozepur observed that the plaintiffs are in unauthorised possession of the suit land and the Collector is fully competent to recover the amount as assessed from the plaintiffs for use and occupation of the suit land, as such, they are not entitled to the relief of declaration and injunction as prayed for. For want of any evidence, Issues No.3 to 5 were held as redundant. The first Appellate Court accepted the appeal and observed that the plaintiffs are not liable to pay 1/3rd share of the produce in respect of the land in dispute. However, the defendants-State shall be at liberty to proceed to recover the dues from them as damages etc. for the use and occupation of the land in dispute under the

(later referred to as 'the Act of 1973') or any other law applicable to them.

7. I have heard learned counsel for the parties and have perused the record of the Courts below with their assistance.

8. Learned Assistant Advocate General, Punjab appearing for the appellants has argued that both the plaintiffs are in possession of separate pieces of land. They are in unauthorised possession and have been paying 1/3rd share of produce. Under the garb of this suit, they have not only stopped the payment but have used the land of the State for the last 31 years without payment of anything for its use and occupation. The Collector is competent to assess the damages which can be recovered from the unauthorised occupants on the Government land. The first Appellate Court has committed grave error of law while decreeing the suit despite the fact that the plaintiffs have no vested legal right in their favour to seek declaration as prayed for.

9. Learned counsel for the respondents has argued that the possession of the respondents-plaintiffs over the suit land is not disputed. There is no order produced on file to show that they were directed to deposit 1/3rd share of the produce over the suit land. No doubt, the State can proceed against the plaintiffs in accordance with law but they cannot be pressed to pay 1/3rd share of the produce. The first Appellate Court has rightly decreed the suit of the plaintiffs by restraining the State from recovering 1/3rd share of the agricultural produce and giving it liberty to proceed in accordance with the Act of 1973.

10. The substantial question of law, which requires consideration in this appeal, is as follows:-

“Whether the plaintiffs have any legal right of which they have sought declaration and the first Appellate Court has committed grave error of law while decreeing the suit of the respondents-plaintiffs restraining the state from recovering 1/3rd share of produce in accordance with law”.

11. Admittedly, plaintiff Manohar Singh is in possession of 56 kanals 5 marlas of land out of suit land and Balbir Singh is in possession of 29 kanals 13 marlas of land. Though both are having separate patches of land but have filed the suit jointly. At this stage, it is not a matter to be decided as to whether the suit is maintainable or not but to see as to whether, the relief claimed by them can be allowed. The land in question is situated at Indo-Pak Border. Plaintiffs have been allowed to cultivate the land despite the fact that they are in unauthorised possession. The question is as to whether the State can charge any amount or share of produce for the use and occupation of the land. Firstly, the plaintiffs have no authority to seek relief of injunction restraining the State from realising 1/3rd share of the produce in respect of the suit land or to claim as to how much amount, the State can realise.

12. Section 7(2) of the Act of 1973 specifically provides that the Collector may assess the damages on account of use and occupation of the premises in unauthorised possession of an occupant. The first Appellate Court has also approved this fact but committed grave error while allowing the decree in favour of the plaintiffs who did not deny their liability to pay the charges for use and occupation of the agricultural land of the State. The power vests with the Collector under Section 7(2) of the Act of 1973 to

i.e. plaintiffs. Defendants specifically alleged in para 3 of the written statement that the plaintiffs deposited a sum of ₹2900/- out of total amount of ₹7,849.61p assessed towards use and occupation of the suit land. Plaintiffs did not rebut this plea of defendants by filing replication. The receipts of amount of ₹2900/- deposited by the plaintiffs were also proved on record as Ex.D1 and Ex.D2. The same in the absence of denial on the part of the plaintiffs that they have not deposited this amount, could not be discarded by first Appellate Court on mere ground that it do not bear the signatures of plaintiffs. Manohar Singh plaintiff did not appear to state anything about the payment of damages for use and occupation of the land in his possession. Balbir Singh plaintiff appeared as PW1 and stated that he is not liable to pay 1/3rd share of the produce, rather he is liable to pay nine times of the land revenue. He stated that plaintiffs had already made payment to the extent of nine times of the land revenue but neither explained the same nor corroborated this fact by leading evidence. He admitted that out of the total amount of ₹12,099.81p, he had paid ₹8236.30p. Admittedly, this amount is not nine times value of the land revenue. Ram Lal, Revenue Accountant, DW2 stated that Manohar Lal deposited ₹2900/- vide receipt Ex.D1 and D2 out of the total amount of ₹7,280.41p assessed towards 1/3rd share of the produce of the land. These payments were approved by the Collector of the District and assessed on the basis of relevant record. He has stated that recovery amount and record pertaining to this was prepared by Halqa Patwari and approved by the Deputy Commissioner. He had brought the entire record at the time of his statement recorded on 05.12.1985.

13. The plaintiffs are claiming that they are liable to pay nine times of land revenue and not 1/3rd share of the produce of land. From the statement of Balbir Singh and evidence on record, it is clear that plaintiffs instead of paying nine times of land revenue, were paying the charges for use and occupation of government land as assessed by the District Authorities. The case filed by plaintiffs shows their high-handedness. Despite being allowed to cultivate the government land, they are not ready to pay the charges for its use and occupation. The suit filed by them is clear misuse of the process of Courts and law. In case, they had any objection regarding the assessment of amount payable by them, they could approach and file objections. Instead they preferred to file the suit which unfortunately had lingered for the last 31 years. The charges for the use and occupation of the land under the possession of the plaintiffs is to be assessed by the Collector under Section 7 of the Act of 1973. Plaintiffs sought the relief of declaration that they are not liable to pay 1/3rd share of the produce. Any relief allowed to the plaintiffs will infringe on the right and authority of the Collector under Section 7 of the Act of 1973. No legal right is vested in the plaintiffs to claim declaration as prayed for. Plaintiffs are fully aware that their possession over the suit land is not as tenants, still they have claimed that charges for use and occupation of the suit land be assessed as nine times of the land revenue. Learned Additional Senior Sub Judge while dismissing the suit has rightly observed that Collector is fully authorised to recover the amount for use and occupation of the suit land from the plaintiffs and they are nobody to dictate any term in this regard. Reversing the finding of learned Additional Senior Sub Judge and decreeing

the suit of the plaintiffs by the first Appellate Court has resulted in grave error of law. Relief of injunction is an equitable and discretionary relief, which can not be allowed to a person(s) who is (are) in unauthorised possession of public properties.

14. The substantial question of law framed in this case is decided in favour of the appellant-State and against the respondents-plaintiffs.

15. As a sequel of my above discussion, the appeal is allowed. The judgement and decree passed by the first Appellate Court is set aside and that of learned Additional Senior Sub Judge is restored. The suit of the plaintiffs is dismissed with costs throughout. The appellant shall be entitled to claim mesne profits for use and occupation of suit land, if not already recovered, from July 1988 till December, 2016 i.e. during pendency of appeal.

December 14, 2016

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:* *Yes/No

Whether Reportable:* *Yes/No