

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

Date of Decision-08.01.2016

1. RSA No.3948 of 2006 (O&M)

Babu Ram and others ... Appellants

Versus

Vijay Singh and others ... Respondents

2. RSA No.4084 of 2006 (O&M)

Sapptar and others ... Appellants

Versus

Vijay Singh and others ... Respondents

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

Present: Mr. S.S. Dinarpur, Advocate
for the appellants in RSA No.3984 of 2006.

Mr. Ashok Kumar Khubbar, Advocate
for the appellants in RSA No.4084 of 2006.

Mr. S.M. Sharma, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment RSA No.3948 of 2006 titled as Babu Ram and others Vs. Vijay Singh and others and RSA No.4084 of 2006 titled as Sapptar and others Vs. Vijay Singh and others are being disposed of. Facts are being taken from RSA No.3948 of 2006.

[2]. Some of the defendants have filed the present appeals against the judgment and decree dated 09.08.2006 vide which appeal filed by the plaintiff-appellant has been accepted by setting aside the judgment and decree dated 28.02.2004 passed by Civil Judge (Junior Division), Jagadhri.

[3]. Plaintiff-respondents filed a suit for declaration to the effect that original plaintiff is owner in possession of land in question as per jamabandi for the year 1988-89 and mutation No.111 sanctioned on 09.12.1992 in favour of defendants is wrong, illegal and null and void and is not binding upon the rights of the original plaintiff (predecessor of the LRs of plaintiff). Consequent permanent injunction has been sought to restrain the defendant from alienating the suit land in any manner. Plaintiff alleged that Balwant Singh son of Daulta was owner of land in question. He died in the year 1977, leaving behind plaintiff as his sole legal heir. Balwant Singh had one sister namely Smt. Soran Devi. Plaintiff is son of that Soran Devi. Soran Devi was married to Raja Ram. In this way, plaintiff is the Bhanja of Balwant Singh and is directly related to him. Balwant Singh was bachelor and had no Class I heir. Plaintiff being sister's son of Balwant Singh comes in the category of Class-II heir under Hindu Succession Act. Plaintiff-appellant used to cultivate the share of Balwant Singh in the joint land and possession of the plaintiff was depicted as "*Bila Lagan Bawja Rishtedari*". After the death of Balwant Singh, defendants Gian Singh, Punjab Singh, Mohinder Singh, Dhani Ram and Dalipa started asserting their possession on the land which was in possession of the plaintiff and that fact led to civil litigation and also proceedings for correction of khasra girdawari. The litigation remained pending in the Court and ultimately a compromise was effected in the village wherein plaintiff gave his share to Gian Singh defendant for cultivation and since then he is in cultivating possession of the same on behalf of

plaintiff. Plaintiff further alleged that plaintiff and defendants are co-sharers in the land as Gian Singh was in possession of share of plaintiff in a joint land. He had been making the payment of land revenue to the Government on behalf of Balwant Singh. The dispute started between the parties in the year 1992 and some of the defendants got entered mutation No.111 in their favour in collusion with Halqa Patwari on 08.12.1992. Mutation was sanctioned by the Assistant Collector Second Grade, Radaur on 09.12.1992 without notice to the plaintiff. As the plaintiff is resident of village Jhanjholi which is at a far place from village Pehladpur where the land is situated, was not informed by the revenue authorities while sanctioning mutation No.111. Plaintiff is actual owner of the estate left by Balwant Singh. He was not issued any notice at the time of sanctioning of the mutation. Plaintiff convened a Panchayat in the village but the defendants threatened to alienate the suit land. With this background, suit came to be filed.

[4]. Suit was contested by the defendants on all counts. Ownership of Balwant Singh was admitted who died in the year 1971. Sole heirship of the plaintiff has been denied. Actually Balwant Singh died issueless and the defendants are the nearest collaterals and actual legal heirs of the deceased Balwant Singh and now they are the owners in possession of the land. Defendants alleged that plaintiff has nothing to do with the suit land and has no relationship with deceased Balwant Singh. So far as Smt. Soran Devi sister of Balwant Singh is concerned she died issueless and the plaintiff had no relationship with

Soran Devi. According to defendants, plaintiff has concocted a false story. Land never been cultivated by him. Even, if, there is some entry in favour of the plaintiff, the same is required to be corrected in the names of defendants. Plaintiff is neither co-sharer nor owner of the suit land. Plaintiff has lost the case of mutation.

[5]. After filing replication, trial Court framed the following issues:-

“1. Whether the plaintiff is owner in possession of the suit land? OPP

2. Whether the mutation No.111 sanctioned on 9.12.1992 in favour of the defendants is wrong, illegal, null and void and not binding on the plaintiff? OPP

3. Whether the plaintiff is entitled to the injunction as prayed for? OPP

4. Whether the suit is hit by the principles of res-judicata? OPP

5. Relief.”

Additional issue No.2-A was also framed:-

“2.A Whether the plaintiff Mehar Singh is sister’s son of Balwant Singh/OPP”

[6]. Parties led their respective evidence to prove their case.

Trial Court dealt with issues No.1, 2, 2-A and 3 jointly and held the same against the plaintiff. Plaintiff has not been found in possession.

Trial Court after discussing relevant issues dismissed the suit vide judgment and decree dated 28.02.2004.

[7]. Legal heirs of Mehar Singh who were impleaded before the trial Court filed appeal before the Lower Appellate Court. The lower Appellate Court commented upon the relationship of the plaintiff Mehar Singh with the deceased Balwant Singh and allowed the appeal while setting aside the judgment and decree dated 28.02.2004 passed by the trial Court. That is why the present appeals came to be filed.

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

[9]. Relationship of plaintiff with Balwant Singh viz. through Soran Devi remained contextual issue between the parties. Soran Devi was sister of deceased Balwant Singh. According to plaintiff Mehar Singh, he was son of Soran Devi who had admitted to sister of Balwant Singh. Plaintiff is not a stranger to the defendants. Litigation started between the parties in the year 1976 and they are known to each other. In the written statement, defendants took an evasive stand and therefore, benefit goes to the plaintiff as the defendants have impliedly admitted the relationship of the plaintiff with Balwant Singh. In the *jamabandi* for the year 1973-74 Ex.P1, plaintiff has been shown to be in possession of the land as relative of Balwant Singh. This document establishes the relationship. The relationship is also established from the statement of PW2 Samay Singh son of Chatter Singh and PW 3 Samay Singh son of Pitamber Singh. Their statements are admissible under Section 50 of the Indian Evidence

Act. The statement of Anirudh defendant No.13 is the clinching issue in the context of relationship between plaintiff and Balwant Singh through Soran Devi. Defendant No.13 Anirudh had admitted their relationship before the Assistant Collector Second Grade wherein he was appellant. Copy of statement Ex.P7 has not been confronted or put to him in the evidence. Moreover, Anirudh has not been examined, therefore question of confronting him with the statement does not arise. Anirudh is shown to have made statement in faovur of plaintiff in earlier litigation who is a defendant in the present suit, therefore, it is argued that the statement made by him is admissible in the present case.

[10]. The another piece of evidence in respect of relationship between the parties is the calendra prepared by police under Sections 107 and 151 Cr.P.C Ex.P10. In the calendra also after making inquiry, Mehar Singh is shown to be nephew of Balwant Singh. According to learned counsel for the appellants, this piece of evidence is admissible under Section 35 of the Evidence Act as the same has been prepared by a public servant in discharge of his official duty. The plaintiff himself has appeared in the witness box as PW 4 and no suggestion has been put to him that he is not the son of Soran Devi. Plaintiff asserted that a suit for declaration is maintainable as he is entitled to succeed the property of Balwant Singh by way of inheritance and he becomes co-sharer in the suit land and therefore, plaintiff is entitled to file suit for declaration as relief of separate possession is not available to him.

The earlier Civil Suit No.793 of 1976 filed by the plaintiff was

dismissed as withdrawn and was not decided on merits. Moreover the said suit was only a suit for injunction and no declaration regarding title was sought in said suit, therefore, cause of action is entirely different and therefore, res judicata is not applicable nor provision of Order 23 Rules 1 and 3 or Order 2 Rule 2 would apply.

[11]. The relationship has been denied by the defendant. According to the defendant, *jamabandi* Ex.P1 does not carry any presumption because revenue entries in favour of plaintiff subsequently corrected and therefore, previous entries do not carry any presumption of correctness. The witnesses of the plaintiff might not have any personal knowledge regarding relationship of the plaintiff and Blawant Singh. Plaintiff has pleaded uncertainty in terms of exact date of death of Balwant Singh as well as Soran Devi. Had it been so then why property of Daulta was not inherited by Soran Devi along with Balwant Singh. It shows that Soran devi died issueless in 1987. No evidence has been produced by the plaintiff to establish that Soran Devi was married to Raja Ram. No Ration Card, voter list, death certificate of Soran Devi or any other document have been produced. The certificates Exs.P11 and P12 are discrepant with regard to date of birth of the plaintiff. Reference to difference of about 12 years makes the certificate totally improbable. Plaintiff has to succeed on the basis of merits of his own case. Earlier Civil Suit No.793 of 1976 was withdrawn and no permission was sought in terms of Order 23 Rules 1 and 3 and Under Order 2 Rule 2 CPC to file a fresh suit, therefore, the suit is claimed to be barred.

[12]. The statement of Anirudh has been recorded before the revenue authority and that in itself is not sufficient to establish any relationship between the plaintiff and Balwant Singh. Plaintiff has not sought relief of possession and simplicitor suit for declaration is not maintainable. Balwant Singh died in the year 1974 and the suit came to be filed on 07.10.1994 and the same is found to be hopelessly time barred according to defendants. The basic dispute is with regard to relationship between Balwant Singh and the plaintiff. Soran Devi is admitted to be sister of Balwant Singh. The question is whether plaintiff is related to Soran Devi or not? Plaintiff alleged himself to be son of Soran Devi whereas defendants have denied and claimed that Soran Devi had died issueless and plaintiff has no relationship with her. It is a settled principle that civil cases are to be decided on the basis of preponderance of probability and evidence. Plaintiff has relied upon *jamabandi* for the year 1973-74 Ex.P1, statements of PW 2 and PW3, statement of Anirudh wherein he has made admission in his statement Ex.P7 recorded before Assistant Collector Second grade and recital of calendra under Sections 107 and 151 Cr.P.C Ex.P10.

[13]. On the other hand, the case of the defendants is based upon earlier testimonies. Apparently, in the *jamabandi* for the year 1973-74 Ex.P1, plaintiff Mehar Singh has been shown to be in possession of suit land as *gair marusi* in column No.9 and there is entry of *Billa Lagan Bawaja Rishtedari*. This entry does not show that Mehar Singh was stranger, rather he was shown to be in possession as a relative. Learned counsel for the appellants contends that entry in

the *jamabandi* carries presumption of truth under Section 44 of Punjab Land Revenue Act. Though such presumption is rebuttable in nature but the same has not been rebutted on record. Even though subsequent entries have been corrected in khasra girdawari by the revenue officer but once the *jamabandi* is prepared, it cannot be corrected by way of subsequent entries that too by revenue officer as only a civil suit is maintainable to correct the entry of the *jamabandi*. Moreover, no such copy of order has come forth on record in respect of correction of khasra girdawari at the instance of the defendants. The correction of khasra girdawari has not been placed on record to show as to from which period the entry has been corrected. Khasra girdawari Ex.P4 shows that correction has been ordered by the Assistant Collector Grade II by order dated 10.02.1977, thereby correcting khasra girdawari w.e.f Rabi 1975. The entries in *jamabandi* for the year 1973-74 are based upon the status of the parties four years prior to preparation of *jamabandi*, therefore, aforesaid order dated 10.02.1977 correcting khasra girdawari w.e.f Rabi 1975 has no effect on the entry of *jamabandi* Ex.P1 i.e. for the year 1973-74. The statement of Anirudh defendant No.3 made before Assistant Collector Second Grade in the proceeding for correction of khasra girdawari has some relevance. The statement recorded before the revenue officer runs as under:-

“Daulat Ram had one son and one daughter. Name of his son was balawant Singh and the name of his daughter was Swaran Devi. Balwant Singh had no child. Only Swaran

Devi was married. Swaran Devi had two children. Elder was Kehar Singh and younger was Mehar Singh. Kehar Singh had died. Balwant Singh had about 8 acres of land. These 8 acres are being cultivated by Mehar Singh even prior to the death of Balwant Singh. There is also a tube-well in this land which was installed by Balwant Singh. No body else is cultivating the land in dispute except Mehar Singh. Mehar Singh is the Bhanja of Balwant Singh. Mehar Singh really entitled.”

[14]. Argument of learned counsel for the defendants that statement of Anirudh made before Revenue Officer vide Ex.P7 cannot be taken into account by the Civil Court. Such statement in the aforesaid suit where Anirudh himself is a party is a relevant factor to be considered. Anirudh having made statement before the Revenue Court is a party to the suit herein as defendant, therefore, the bar of consideration of such evidence cannot be taken, unless it is brought out within the permissible provision of the Evidence Act. Since Anirudh himself is a party defendant No.13 in the present suit, therefore, in the capacity of defendant he could have explained the admission made by him before the Revenue Officer. Anirudh has not been examined in the present case. It is not only the statement of Anirudh Ex.P7, the other ocular version in the form of statements of PW2 and PW3 who have shown the relationship and their testimonies have fulfilled the requirement of Section 50 of the Evidence Act. By the evidence of aforesaid standards i.e. copy of jamabandi Ex.P1, statement of Anirudh Ex.P7, statements of PW2 and PW3, high degree of probability has been created thereby shifting the onus on the

defendant to prove to the contrary. Defendants have failed to discharge any such onus proving to the contrary, therefore, it has to be taken that plaintiff is not a stranger to the defendants. Even in the cross examination of the plaintiff, defendants have not suggested that he is son of some other lady and he is not son of Soran Devi. Only an evasive stand has been taken by the defendants in the written statement. It is not sufficient to disprove the relationship of plaintiff with Balwant Singh and Soran Devi. A dint in the plaintiff case is sought to be made by the statements of DW 1 Jaimal Singh, DW 2 Sampat Singh and DW 3 Ashok Kumar.

[15]. These earlier testimonies have been discussed by the Lower Appellate Court only to arrive at conclusion that these testimonies carry no evidentiary value inasmuch as that there is no personal knowledge driven from these testimonies in respect of relationship between deceased Balwant Singh and the plaintiff. The statement of DW1 is in the context that he has stated that there was a daughter and she died before attaining age of discretion and he never knew about her marriage. However, he has admitted that Blawant Singh was having a sister who died before attaining the age of discretion. The witness has not categorically stated that sister of Balwant Singh was never married, rather he pleaded ignorance and stated that he did not know whether she died after the marriage or unmarried. Similarly statement of DW 2 Sampat is also waived in direction when he stated that Daulta had two issues one son Balwant Singh and second daughter who died at the age of 4/5 years. These

witnesses were not related to community of the defendants. The third witness Ashok Kumar DW 3 who is power of attorney of Jagmal Singh defendant No.2. The witness was only 29 years of age at the time of statement and his statement was recorded on 24.10.2002. Balwant Singh had died in the year 1971, therefore, at the time of making such statement Balwant Singh was not in existence. Therefore, this witness could not have any personal knowledge about the relationship of Balwant Singh viz-a-viz his sister and the plaintiff. Once the plaintiff is proved to be co-sharer in the suit land, suit for declaration without seeking possession is maintainable and co-sharer is entitled to a decree for declaration as joint possession is inbuilt mechanism. Every co-sharer is deemed to be in possession of every inch of land unless and until the suit is partitioned by metes and bounds. However, res judicata under Order 23 Rule 1 and 3 and under Order 2 Rule 2 CPC as raised by the defendants have to be decided against them as the earlier suit was not decided on merits. Moreover, earlier suit was for injunction wherein no such declaration was sought. No such title was claimed in the earlier suit, therefore, subject matter of both the suits are not on the same platform. On limitation, specific issue was framed. Suit cannot be held to be barred as cause of action to the plaintiff to file suit accrued for the first time with the sanctioning of mutation No.111 dated 09.12.1992 in favour of the defendants. Earlier to that, entries were in the name of Balwant Singh maternal uncle of plaintiff, therefore, there was no such threat to the title of the plaintiff prior to sanctioning of aforesaid mutation. Filing of suit on 07.10.1994 is within

3 years from the date of sanctioning of the mutation and therefore, suit is proved to be within limitation.

[16]. I have considered the submissions made in the aforesaid context. In my considered opinion, the questions as formulated in the grounds of appeal do not arise at all. Question No.A cannot be answered inaffirmative in view of fact that findings recorded by the Lower Appellate Court is based on evidence and correct appreciation of evidence on record. There is no misreading of evidence or the findings are not proved to be perverse. As regards Question No.B, it has to be held that Anirudh whose statement Ex.P7 is the subject matter of consideration herein in the suit is very much party in the suit itself and therefore, even if his statement before the Revenue Authority was without Oath, the same could have been confronted in the present suit. Despite, he being party defendant to the suit has not been examined, therefore, adverse interference has to be drawn against the defendants. Similarly, question No.C has to be answered in the light of facts detailed in the calendra which is further corroborated by the statements of Anirudh, Ex.P1, PW2 and PW3. Preponderance of probability has been established with reference to evidence on record. *Jamabandi* Ex.P1 also carries presumption of correctness and that presumption has not been rebutted even by correction in khasra girdawari which was from 1975 onwards. *Jamabandi* was prepared on continuous entries in khasra girdawari for four years preceding to the *jamabandi* for the year 1972-73, therefore, *jamabandi* in question could not be rebutted by any cogent evidence

on record. The correction after preparation of *jamabandi* is exclusively under the domain of the Civil Court and this *jamabandi* has not been challenged even with the help of subsequent facts inclusive of correction proceedings in the khasra girdawari by the revenue officer. Question No.D with regard to maintainability of suit for declaration has to be answered in favour of the plaintiff. Once the plaintiff is proved to be co-sharer in the land, suit is maintainable inasmuch as that a co-sharer would be deemed to be in possession of every inch of land unless and until the suit is portioned by metes and bounds. Joint possession is inbuilt mechanism in case, plaintiff is proved to be co-sharer. Question No.E does not arise at all as no such injustice is proved to be occasioned to the appellant in the event of decree in the suit which is based on correct appreciation of evidence on record.

[17]. Having considered the controversy in detail, I find that there is no illegality in the impugned judgment and decree passed by the Lower appellate Court and the same is accordingly upheld. Consequently, these appeals are dismissed being total bereft of merits.

(RAJ MOHAN SINGH)
JUDGE

08.01.2016
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