

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

RSA No.4127 of 2009 (O&M)

Date of decision : 07.11.2016

Raj Kumar and others

...Appellants

Versus

Bhawar Singh and others
(deceased through LRs)

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. T.C. Dhanwal, Advocate for the appellants.

Mr. S.K. Chauhan, Advocate
for respondent Nos.1-a to 1-h, 2-a & b, 3 and 4.

Mr. Anil Kumar Gahlawat, Advocate for respondent No.5.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby relief seeking declaration that they are in cultivating possession of the land described in the head note of the plaint and as well as challenge to the order dated 07.04.1994 passed by the Naib Tehsildar exercising the powers of Assistant Collector, Grade-II, Tosham regarding change of khasra girdawari of the disputed land and consequential relief of permanent injunction from forcibly dispossession and interference, has been dismissed by both the Courts below.

Mr. T.C. Dhanwal, learned counsel appearing on behalf of appellants-plaintiffs submits that appellants had been recorded in the

revenue record as gair marusi/tenants on payment of rent since time immemorial i.e. more than 100 years. In that regard had brought on record the documents i.e. power of attorney Ex.P1, jamabandi for the years 1984-85, copies of khasra girdawri for the year 1992 to 1994 and as well as receipts of the rent. The order of the Collector was ex parte which had been passed at the back of the appellants and, therefore, against the provisions of 9.9 of the Punjab Land Records Manual extracted in the memorandum of appeal. If the order is without jurisdiction despite the availability of the alternative remedy, same can be challenged either by invoking the provision under Section 9 of the Code of Civil Procedure or under Article 226 of the Constitution of India. It is in this backdrop of the matter, suit aforementioned was filed but the Courts below have abrogated, much less, misconstrued and misread the oral and documentary evidence. At least the appellants should have been heard before ordering the correction in the khasra girdawari for the relevant year.

Per Contra, Mr. S.K. Chauhan, Advocate and Mr. Anil Kumar Gahlawat, learned counsel appearing on behalf of respondents-defendants submits that appellants-plaintiffs had not availed the statutory and alternative remedy to file appeal before the Commissioner or revision before Financial Commissioner. It was the correction by way of farad badar as jamabandi would not clothe the status of possessory rights to the appellant-plaintiff. Except the stray entry in the khasra girdawari referred above, all the documents as well as revenue record reflected the possession of the defendant. The roznamcha dated 06.05.1994 Ex.D2 and khasra girdawaries Ex.D3 and Ex.D4, much less, jamabandi for the year 1996-1997, 1992 to

1997, 1992 to 1994 show the continuous possession in respect of the opposite side. All these factors weighed in the mind of the Court while dismissing the suit, thus, there is no illegality and perversity, much less, any cause arises for interference and urges this Court for dismissal of the appeal.

I have heard learned counsel for parties and appraised the paper book.

Documents brought on record by defendants as noticed in the submission leaves an irresistible conclusion that possession was of the defendants except the stray entry in jamabandi for the years 1984-85, 1994. The foundation in the suit was that plaintiffs were in continuous possession as tenant since immemorial period but the evidence is lacking on their part, therefore, I am of the view that appellants-plaintiffs have failed to discharge the onus as enshrined under Section 101 of the Indian Evidence Act. In fact failed to prove the averments made in the plaint by leading direct, cogent or corroborative evidence.

Concurrent findings of fact are based upon the appreciation of oral and documentary evidence.

I do not find any illegality and perversity.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

07.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No