

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

**RSA-1986-2010 (O&M)
Date of decision : 24.10.2016**

Yashpal and another

... Appellants

Versus

Mehru (deceased through LRs) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Bansal, Advocate
for the appellants.

Mr. Satbir Rathore, Advocate
for respondent Nos.1(i) to 1 (iii).

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby the suit seeking declaration to the effect that the parties to the suit are in possession/joint possession with equal right and revenue entries deleting the name of Parsi @ Paras Ram, father of the plaintiff, from the column of possession in the Jamabandi for the year 1973-74, 1978-79 & 1989-90 by succeeding interest in the name of the plaintiffs from the subsequent Jamabandi for the year 1989-90 and 1994-95 pertaining to the land bearing khasra Nos.849, 850, 851, 1130 area (52-11) as per Jamabandi for the year 1994-95 situated in Village Bari HB No.565, Tehsil Mukerian, District Hoshiarpur being illegal and void, has been dismissed by both the Courts below.

Mr. Sandeep Bansal, learned counsel appearing on behalf of the appellants-plaintiffs submits that Haru had two sons, namely, Jaishee and

Kalindo. Jaishee had two sons, namely, Giana and Rania, who are the defendant Nos.2 and 3. Kalindo had two sons, namely, Mehru and Paras Ram. Defendant No.1 is Mehru and whereas the plaintiffs are the sons and daughters of the Paras Ram and his wife, namely, Kishni, who after demise of Paras Ram, died in the year 1987. The claim in the suit, aforementioned, is not with regard to the ownership as the land is *shamlat deh*. It is only with regard to the possession. Before the Courts below, the evidence (Ex.P-3 & Ex.P-4 i.e. jamabandi for the year 1964-65 and 1989-90) were led, to show the possession of Paras Ram. In fact, the stand of the defendant(s) was that Paras Ram, who was serving in the Indian Army, had left his share in the year 1976, but this fact has been belied/proved wrong through the cross-examination of the defendant's witness. Even the possession has been shown that of a *Hisadar*. The Courts below have relied upon the jamabandis for the year 1994-95 (Ex.P-7) & 1999-2000 (Ex.D-2) which were, after the death of Paras Ram. Jamabandi for the year 1989-90 (Ex.P-8) has also proved this fact. Paras Ram, who was serving in the Indian Army, died in the year 1984. All these facts have not been noticed while dismissing the suit, thus, there is a illegality and perversity and prays for setting aside the findings under challenge.

Per contra, Mr. Satbir Rathore, learned counsel appearing on behalf of the respondent Nos.1 (i) to 1 (iii) submits that the most crucial documents to claim the right aforementioned, particularly when the appellants-plaintiffs attained the majority in the year 1993 was, the jamabandis for the year 1972-73 & 1974-75 to show that Paras Ram, during his lifetime or had a possession. In the absence of the same, rightly so, the suit has been dismissed. The concurrent findings of fact cannot be

interfered until and unless there is gross illegality and perversity, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Sandeep Bansal, for, the cause of action had accrued to Paras Ram, during his lifetime, for seeking correction in the jamabandi for the year 1972-73 & 1974-75 but, was not availed. Non-producing/proving of the same leads to a adverse inference, thus, the appellants-plaintiffs being legal heirs having attained the majority in the year 1993, did not have any specific right, could have been availed by Paras Ram, during his lifetime. In my view the Courts below have rightly declined to grant the relief.

For the foregoing reasons, I do not intend to differ with the findings of both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

24.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No