

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

**R.S.A No. 2428 of 2012 (O&M)
Date of decision :04.02.2016**

Karnail Singh and others

..... Appellants

Versus

Harbhajan Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Karanjit Singh, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 09.02.2012 passed by the learned Additional District Judge, Amritsar, vide which the appeal preferred against the judgment and decree dated 23.09.2008, passed by the learned Civil Judge (Jr. Division), Ajnala, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The plaintiffs have filed the suit for declaration under Section 45 of the Punjab Land Revenue Act read with Chapter VI of Specific Relief Act for correction of record of right with respect to the land measuring 66 Kls. 2 Mls. situated in village Kot Rajada, Tehsil Ajnala, District Amritsar. Originally the suit was filed by plaintiff Sohan Singh, who died during the pendency of the suit and his legal

representatives were brought on record. As per the case set up by the plaintiffs, plaintiff Sohan Singh was allotted the suit land as Fauji Allottee by the Punjab Government about 30 years back and possession was delivered to him. After the allotment of the land in question, in column of ownership, the name of Punjab Government was entered and the plaintiff was shown to be occupant in column no. 5 of the Jamabandies. The plaintiff appointed defendant Darshan Singh and Kulwinder Singh as his attorney to look after and cultivate the land of the plaintiff on his behalf. But, they in connivance with the revenue officials got incorporated their name in column no. 5 as "Marfat Darshan Singh and Kulwinder Singh" in the jamabandi for the year 1981-82 without the permission of plaintiff. They also got incorporated in column no. 9 of the jamabandi in connivance with Halka Patwari "Ghair Marusi Dom Lagan Rs. 350/- per killa" in the jamabandi for the year 1991-92, 1996-97 by playing a fraud with the plaintiff. The defendants had never paid any rent to the plaintiff. When, the plaintiff discovered this act of cheating and fraud, he cancelled the power of attorney on 09.06.1998 and requested the defendants to make the statement for correction of the revenue record in his favour. But, they refused to do so. Hence the suit.

4. The defendants-respondents contested the suit on the grounds *inter alia* that they are in cultivating possession of the suit land since 1981. The plaintiff had sold his possessory rights to the defendants for a sum of Rs. 9900/- vide agreement dated 01.01.1981. Since then, they are in possession of the suit land. Earlier, the suit land was Banjar. They made it fit for cultivation after spending huge amount. Their

possession is fully corroborated by the revenue record. It was further pleaded that during the pendency of the suit, the defendant no.1 has purchased the suit land measuring 33K-1M, which is $\frac{1}{2}$ share of the land measuring 66 K-2M from the Government vide conveyance deed dated 28.08.2003. On the basis of which, they become the owner of the land measuring 33K-1M being $\frac{1}{2}$ share of the total suit land measuring 66K-2M. It was further pleaded that the other $\frac{1}{2}$ share of the land has been purchased by Narinder Kaur wife of late Kulwinder Singh vide conveyance deed dated 30.10.2003. The entire amount has been deposited by the defendant with the government and at present the answering defendant is in possession of the land measuring 33K-1M and mutation has also been sanctioned in their favour. Defendants also raised certain legal and preliminary objections and pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court on 19.03.1999:-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether the suit is not maintainable?OPD
3. Whether the plaintiff has got no locus-standi to file the present suit?OPD
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether the plaintiff is estopped by his own act and conduct from filing the suit?OPD
6. Whether the plaintiff has concealed the material facts from this Court, if so its effect?OPD
7. Whether the suit is liable to be stayed U/s 10CPC?OPD

Following additional issues were also framed by the learned trial Court on 13.06.2006:-

7-A. Whether Provincial Government has executed conveyance deed dated 28.08.2003 in favour of defendant no.1, if so its effect?
OPD

7-B. Whether this Court has no jurisdiction to try the suit?OPD

8. Relief.

6. On appreciating the evidence and material on record, the learned trial Court dismissed the suit of the plaintiff vide impugned judgment and decree dated 23.09.2008.

7. Aggrieved with the aforesaid judgment and decree dated 23.09.2008, the legal representatives of the plaintiff preferred the appeal, which was also dismissed by the learned Additional District Judge, Amritsar, vide impugned judgment and decree dated 09.02.2012. Hence this Regular Second Appeal.

8. I have heard Mr. Karanjit Singh, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contented that deceased-plaintiff Sohan Singh was allotted the land in dispute and he was in cultivating possession thereof in his lifetime. After his death, his rights were inherited by his legal representatives. The defendants in collusion with the revenue officials manipulated and got fabricated the revenue entries showing their cultivation without any basis. The said entries have been changed without following the procedure laid down under the Act. He further contended that the conveyance deeds executed during the pendency of the suit are illegal and not binding on the rights of the appellants. He further contended that the suit has been

filed well within the period of limitation from the date of knowledge of the said wrong entries. So, the suit is perfectly within limitation. Thus, he pleaded that the learned Courts below had wrongly dismissed the suit.

10. I have duly considered the aforesaid contentions.

11. This Regular Second Appeal has been preferred against the concurrent findings of facts recorded by both the learned Courts below. The law is well settled that the scope of interference with the concurrent findings of fact while exercising the powers under Section 100 of the Code of Civil Procedure, 1908 is very limited. It is only permissible where the Courts below misdirected themselves in appreciating the question of law, the onus was placed on the wrong party, the material or relevant evidence was not considered, which if, considered would have led to an opposite conclusion and that the findings have been arrived at by the learned Courts below by placing reliance on inadmissible evidence, which, if, omitted would have led to the opposite conclusion and finally that the judgments passed by the Courts below are perverse. It is also the settled principle of law that in Regular Second Appeal, the High Court cannot indulge in the task of re-appreciating the evidence. In view of the aforesaid principles of law, we have to examine the case in hand.

12. While dealing with the change of the revenue entries on appreciating the entire material on record, the learned First Appellate Court came to the following conclusion:-

“So in this way, after a careful perusal of the evidence of both the parties, this fact fully stands established that appellants-plaintiffs

miserably remained failed to prove their alleged plea that deceased plaintiff ever executed any power of attorney in favour of the defendatns and delivered the possession for looking after the land on the basis of the said power of attorney, rather from the evidence of the witnesses of the defendants and other material, this fact fully stands established that deceased plaintiff Sohan Singh sold his possessory rights by executing a legal and valid agreement dated 01.01.1981, copy of which is Ex.D-3. Original agreement has been lying in other civil suit filed titled as “Darshan Singh Vs. Sohan Singh” and by examining DW4 Ahlmad of the Court, who brought the original file, has duly proved this fact and since then the defendant-respondents came into legal possession of the suit land and on the basis of their continous possession, the suit land was transferred in the name of the defendants by the Govt. as the land was owned by the Punjab Government. Conveyance deed as per law has been issued by the Govt. in favour of the defendants. Mutations have been sanctioned on the basis of the said conveyance deeds and the defendants have become the owners in possession of the suit land as per law. So the contentions of the appellants-plaintiffs that in connivance with the revenue officials, entries have been wrongly changed, cannot be said to be, in any manner, stand proved and established.”

13. This Court has also no reason to differ with the aforesaid conclusion arrived at by the learned First Appellate Court on appreciation of the evidence. Learned counsel for appellants has also not been able to point out any factual or legal defect in the conclusion arrived at by the learned Courts below. Consequently, the learned Courts below have rightly held that the plaintiff was not entitled to seek declaration for correction of the revenue entries as he was not proved to be in possession of the suit land since the date he transferred his possessory rights in favour of the defendants. Later on, even the conveyance deeds have been executed by the Punjab Government in their favour. Thus, the concurrent findings arrived at by the learned Courts below requires no interference.

in the second appeal while exercising the limited powers under Section 100 CPC.

14. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

15. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 04, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**