

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

RSA-3548 of 2013 (O&M)

Date of decision: 17.05.2016

Sharda and others

...Appellants

Versus

Indraj and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Babbar Bhan, Advocate for
Mr. Vinod S. Bhardwaj, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

The suit for declaration filed by the plaintiff/appellants (for short 'the appellants') was dismissed by the trial Court vide judgment and decree dated 08.03.2010.

2. Aggrieved against the findings of trial Court, the appellant filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 06.03.2013.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellants.

4. It is contended that both the Courts below have gravely erred in dismissing the claim of the appellants. The appellants along with proforma respondents are in cultivating possession of the suit land situated in the revenue estate of village Babarwas being tenants at Will for a period of more than 50 years. He further states that mere change in the khasra girdawari, ipso-facto would not change the possession, ownership or tenancy right of the appellants and thus, the khasra girdawari has no bearing on the possession of the appellants. In support of his contentions, the learned counsel cites Ram Bhul and others Vs. Ram Chand, 2011(1) RCR (Civil) 668.

5. Heard, the learned counsel for the appellant and perused the record carefully.

6. Along with the appeal, the appellants have also filed CM-9534-C-2013 for condonation of delay of 54 days in filing the appeal on the ground that there was some communication gap between the learned counsel, his clerk and the steno due to which the delay has occasioned.

There are no good grounds to condone the delay and the same appears to be result of afterthought. The appeal being time barred is liable to be dismissed on the score above. However, this Court shall proceed to examine the case on merits.

7. The appellants have claimed to be the owners in possession over the suit land being tenants at Will on nominal rent for the last more than 50 years. The share of the appellants to the extent of 3 bisvas in the total land measuring 57 bighas 15 bisvas is not disputed. In support of their case, the appellants have proved on record the jamabandi, Ex.P1, wherein, Sukhi Ram, the husband of the appellant No.1 has been shown to have 1/48th share in the land. The appellants had also relied upon jamabandi for the year 1971-72, whereby their predecessor-in-interest, Sukhi Ram, was shown to be as tenant at Will. Except the jamabandi for the year 1971-72, there is no other revenue record to prove the possession of the appellants over the disputed property, whereas, as per khasra girdawaris for the year 1987-88, 1991 to 1996 and 1996 to 2004, respondent No.1 has been shown to be a tenant at Will in the suit property. The sole assertion of the appellants that mere change in khasra girdawaris would not change their ownership rights is repelled as they had never challenged the corrected entries before the competent authority. There is nothing on record to show that there was any agreement between the parties that the appellants would not be ejected from the suit land. No evidence has been brought on record that as to what was the nominal rent and how the same was assessed by the appellants. Moreover, the respondent

No.1 has been shown to be in possession of the suit land since 1987-88, whereas, the suit was filed in the year 2001. The only single entry in the revenue record i.e. jamabandi 1971-72 does not confer the right of the appellants over the suit property. The appellants have miserably failed to prove on record any other entry prior to 1971-72 or later thereto. Thus, in the absence of any such document or evidence, this Court is of the opinion that both the Courts below have rightly dismissed the suit of the the appellants. Both the courts below have concurrently held that the plaintiffs-appellants have failed to establish their possession over 28 bighas 15 biswas of land. This court, after appraisal of entire record, concur with the findings of both the courts below. Thus, in view of the above facts and circumstances of the case, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below neither suffer from any perversity or illegality nor any material point has been left un-addressed. Needless to say that the entire foundation of the story of the appellants was never established.

7. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for. The ratio of the reported case shall not apply to the facts of the instant case.

The appeal is accordingly dismissed on merits as well as being time barred.

17.05.2016

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(JITENDRA CHAUHAN)
JUDGE