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

RSA-4178-2013

Date of Decision:21.01.2016

KISHAN AND OTHERS**...Appellant****VERSUS****GODHA RAM AND OTHERS****...Respondents****CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

1. Whether Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Surinder Dagar, Advocate
for the appellants.

DARSHAN SINGH J.

The present appeal has been preferred against the judgment and decree dated 14.05.2013 passed by the learned Additional District Judge, Faridabad whereby the appeal directed against the judgment and decree dated 20.11.2012 passed by the learned Civil Judge (Junior Division), Faridabad was dismissed.

2. Appellants-plaintiffs have filed a suit for declaration to the effect that they are absolute owners in possession of the suit land and the revenue entries showing the defendants as mortgagees and the plaintiffs as Gair Marusi on ½ batai are wrong, illegal and liable to be deleted.

3. As per the case of the plaintiffs, they are absolute owner in possession of the agriculture land measuring 6 kanals 13 marlas comprised

of Khewat No.77, Khatauni No.92, Rect. No.13, Killa No.24/2 situated within the revenue estate of Village Shahpur Khurd, Tehsil Ballabgarh, District Faridabad vide jamabandi for the year 2004-2005. That the plaintiffs have been recorded as owners/mortgagors in respect of the suit land and defendants have been recorded as mortgagees. The plaintiffs have never delivered the actual physical possession of the suit land to the defendants at any time and the revenue entries showing the plaintiffs as Gair Marusi under the mortgagees are contrary to the facts and law because the plaintiffs and their predecessors-in-interest have always remained owners in possession of the suit land but entries have been wrongly recorded in the revenue record. The defendants had never tried to take any physical possession of the suit land from the plaintiffs or their predecessors-in-interest nor they ever collected any rent/batai from the plaintiffs or their predecessors-in-interest. The period for limitation for taking possession of the suit land by the defendants had also expired. The defendants have no right, title or interest in the suit land and they are entitled for getting the revenue entries corrected. Hence this suit.

4. The defendant-respondents were proceeded against ex-parte.

5. The learned trial Court dismissed the suit vide impugned judgment and decree dated 20.11.2012. The appeal filed by the appellants/plaintiffs was also dismissed by the learned Additional District Judge, Faridabad vide judgment and decree dated 14.05.2013. Hence this regular second appeal.

6. I have heard Shri Surinder Dagar, Advocate, learned counsel for the appellants and have carefully gone through the paper book.

7. Learned counsel for the appellant at the very outset pleaded that

the following substantial questions of law arises in the present appeal:-

1. *Whether the Court can decide a suit without framing issues and without giving specific finding on each and every issue?*
 2. *Whether the findings of the Ld. Courts below are not perverse specifically when the appellants are owner in possession of the suit property?*
 3. *Whether the Ld. Civil Court has no jurisdiction to correct the revenue entries specifically the entries entered in the Jamabandi?*
 4. *Whether the Ld. Courts below have mis-read and mis-interpreted the evidence on record?*
8. He contended that the learned trial Court has not framed any issue to properly adjudicate upon the material issues. He further contended that from the evidence adduced by the appellants-plaintiffs which had gone under unrebutted, it is established that they are owner in possession of the land in dispute. They never mortgaged the suit land and possession always remained with them. They also did not pay any rent/batai to the defendants. Thus, he contended that the entries in the revenue record are wrong and are liable to be corrected.
9. I duly considered the aforesaid contentions.
10. As already mentioned the defendant-respondents were proceeded against ex-parte and they had not filed any written statement. So, there was no conflicting pleadings of the parties, which could have required the trial Court to frame the issues. Thus, no prejudice has been caused to the rights of the appellant/plaintiffs due to non-framing of issues.
11. The plaintiffs have come to the Court to seek declaration that

they have never mortgaged the suit land with the defendants. The revenue entries showing the defendants as mortgagee and plaintiffs as Gair Marusi under the mortgagees on payment of ½ batai are wrong and liable to be corrected. It is settled principle of law that the plaintiff has to stand on his own legs and he/they cannot take the benefit of the weakness in the case of the defendants. To support this view reference can be made to case '*Punjab Urban Planning and Development Authority versus M/s Shiv Saraswati Iron and Steel Re-rolling Mills, AIR 1998 SC 2352.*'

12. So, in the instant case in order to succeed, it was for the plaintiffs to show as to how the long standing revenue entries showing the defendants as mortgagee and the plaintiffs as Gair Marusi under the mortgagees on payment of ½ batai were wrong.

13. The plaintiff –appellants in their evidence have examined Attar Singh -plaintiff No.2 as PW-1 and Ram Lal as PW-2. They also tendered in the evidence, the copies of jamabandis from the year 1964-1965 onwards to the year 2004-2005 and the khasra girdawaris Ex.P-1 and P-2 but they have not been able to show as to on what basis they are alleging that the entries in the revenue record are wrong. It is settled principle of law that presumption of truth is attached to the jamabandi entries as per Section 44 of the Punjab Land Revenue Act. Cogent and convincing evidence is required to rebut the said presumption of truth. The learned First Appellate Court has observed that the testimonies of appellant/plaintiff-Attar Singh (PW-1) and Ram Lal (PW-2) could not rebut the presumption of truth attached to the revenue entries and rightly so, as mere oral evidence cannot rebut the consistent revenue entries.

14. Thus, there is nothing to show that the learned Courts below

have misread or mis-interpreted the evidence on record or the concurrent findings of fact recorded by the learned Courts below are perverse.

15. Resultantly, no question of law, much less, the substantial question of law as claimed by the appellants arises in the present appeal. Hence, the present appeal being devoid on merits is hereby dismissed in limine. No order as to costs.

(DARSHAN SINGH)
JUDGE

January 21, 2016
rajneesh