

RSA No. 4410 of 2013 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No. 4410 of 2013 (O&M)

Date of decision:27.4.2016

Ajit Singh

... Appellant

versus

Dilbagh Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.S.K.Mahajan Advocate,
for the appellant
Mr.Premjit Kalia, Advocate,
for the respondents-caveators
...

To be referred to reporter? (Yes) (No)

AMOL RATTAN SINGH, J.

CM No.11840-C of 2013

By this application, the applicant-appellant seeks to lead additional evidence in the form of a sale deed dated 29.12.2000 (Annexure A-2 herewith), showing that he had purchased 4 kanals and 10 marlas of land falling in Khasra No.64//10/1/1, situated in Village Meeran Kot Kalan, Tehsil and District Amritsar, from one Mahinder Singh son of Harnam Singh, who was shown to be owner to the extent of 1/4th share in Khasra No.64//10/1/1/, Khatoni No.196, Khewat No.87, (total land measuring 7 kanals and 11 marlas), as per the jamabandi for the year 1991-92. Thus, the additional evidence sought to be led at the stage of second appeal is in the form of a sale deed which was stated to have been executed during the pendency of the suit

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before the learned Civil Judge (Junior Division), Amritsar, which suit was finally decided on 13.9.2008, i.e. about 8 years after the stated execution of the sale deed. The suit itself was filed on 18.11.1998. Upon query as to why the said evidence was not led, either before the learned Civil Judge or even thereafter before the learned lower appellate Court, no sustainable reply is forthcoming, except to the extent that the counsel for the plaintiff (present appellant) before the Courts below, did not move the necessary application before the Courts below.

Order 41 Rule 27 CPC reads as under:-

“27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

Thus, unless in terms of sub clause (b) of Clause (1) of Order 41,

Rule 27 of the CPC, the Appellate Court itself is of the opinion that any

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document is required to be produced, the person seeking to lead additional evidence, is to show that either the Court from whose decree the appeal was preferred refused to admit the evidence, which is now sought to be led, or that despite due diligence, such evidence was not available with the applicant, at the time when the matter was heard by the Courts below.

Consequently, with the applicant-appellant not even having attempted to lead such additional evidence for 8 years before the learned Civil Judge (Junior Division), Amritsar, and thereafter during the pendency of the appeal before the learned lower appellate Court for about 4-1/2 years, I see no ground to allow the application to lead additional evidence at the stage of the second appeal, especially as the issuance of a decree granting permanent injunction, is dependent upon actual physical possession of a suit property, and not simply upon a change of title by any sale deed entered into during the pendency of a *lis*. The applicant-appellant herein had sought a decree of permanent injunction against the respondents, restraining them from interfering in his alleged peaceful possession of the suit property, which he claimed to be in adverse possession of, for 30 years. However, no declaration of ownership was sought by the applicant-appellant-plaintiff, in the suit out of which this second appeal arises. Hence, in the opinion of this Court, in these proceedings at least, the sale deed, if any was actually entered into by the applicant-appellant, during the pendency of the suit, showing transfer of ownership of the suit land or any part of it, would have no bearing on a suit seeking only permanent injunction on the basis of possession.

The question of whether there is any perversity or manifest error in the findings of the first Appellate Court, holding that the applicant-

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appellant-plaintiff had not been able to prove his possession over the suit property, would be an issue to be looked into by this Court while deciding the appeal itself, hereinafter.

In view of the above, the application is dismissed.

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1. As already said, this appeal has been filed by the appellant-plaintiff in a suit that he instituted, seeking permanent injunction against the respondents-defendants from interfering in his possession of land measuring 4 kanals and 10 marlas, fully described in the head note of the judgment and in the decree passed by the learned Civil Judge (Junior Division), Amritsar.

2. The claim of the appellant was that he was in possession of the suit land for the last 30 years and had 'broken the nautor land' and made it fit for cultivation whereas earlier it was not cultivable. To prove his possession, he led evidence in the form of a 'jamabandi' (record of rights) for the year 1996-97, showing him to be in cultivating possession of the suit land. He further examined PW1, Dara Singh, Ex-Sarpanch, and PW2 Harbans Singh, who deposed on similar lines, as per the stand of the appellant-plaintiff. The plaintiff also stood in the witness box as PW3, in support of his claim.

3. The learned Civil Judge, on the aforesaid oral testimonies and the entry in the jamabandi for the year 1996-97, decreed the suit in favour of the appellant-plaintiff, holding that since it was not a suit seeking any declaration but only seeking permanent injunction restraining the defendants (respondents herein) from interfering in the plaintiffs' possession and he had been able to prove such possession, he was entitled to a decree of permanent

injunction.

4. In the appeal filed by the respondents-defendants, before the learned District Judge, Amritsar, though the factum of possession of the plaintiff (appellant herein), recorded in the jamabandi for the year 1996-97, was also found to be a matter of fact, however, the judgment and decree of the learned Civil Judge (Junior Division), Amritsar, was reversed on the ground that firstly, there was no basis, whatsoever, shown, as to how the appellant-plaintiff came into possession of the suit land, and how the entry in the 'jamabandi' for the year 1996-97 came to be shown in his favour, in the column of cultivation. It was also held that there was no notice issued to the defendants before changing the entry in the column of cultivation, in favour of the appellant-plaintiff. The persons earlier shown in the column of cultivation, in the 'jamabandis' prior to 1996-97, were, admittedly, the predecessors-in-interest of the defendants and with no notice issued, either to them, or to their vendees, i.e. the present respondents-defendants, it was held that the entry in the jamabandi for the year 1996-97 could not have been changed.

5. Before this Court, learned counsel for the appellant submits, as was also held by the learned Civil Judge, to the effect that it being only a suit for permanent injunction, the suit was correctly decreed in favour of the appellant-plaintiff by the learned lower Court, as the appellant was shown to be in possession of the suit land, in the jamabandi for the year 1996-97.

6. Learned counsel for the caveators-respondents, on the other hand, has relied upon a judgment of the Supreme Court in Durga (deceased) and others vs Milkhi Ram and others, 1969 PLJ 105, to submit that under

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Section 44 of the Punjab Land Revenue Act, 1887, the correctness attached to the revenue entries is to be presumed, but as a rebuttable presumption.

He submits that in the present case, with the learned lower appellate Court specifically holding that there was absolutely no basis whatsoever, to show as to how the entry in the 'jamabandi' for the year 1996-97 came to be entered in favour of the appellant-plaintiff, in the column of cultivation, with not even a notice having been issued to the previous cultivators of the land, the said entry cannot be read in favour of the appellant-plaintiff, to prove his possession over the suit land.

7. Having considered the arguments of both the learned counsel, I am of the opinion that the judgment and decree of the learned lower appellate Court does not require to be interfered with, in view of the fact that though the appellant-plaintiffs' specific claim was that he had been in cultivating possession of the suit land for the last 30 years and more and, in fact, he had made it cultivable, other than oral evidence led in his favour, documentary evidence was wholly against him, inasmuch as, the suit having been filed in 1998, the entry showing his possession was only from the year 1996-97 onwards. Hence, his contention that he was in cultivating possession of the suit land for the past 30 years and more, obviously stood negated by the very fact that he could not produce any revenue record prior to 1996-97, to show that he was actually in cultivating possession thereof.

8. It needs to be noticed that a change of entry in a 'jamabandi' (Record of Rights) is not to be varied otherwise than in accordance with facts proved or admitted to have occurred, or if such change of entries is agreed to by all the parties interested therein, or pursuant to a decree or order binding

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on such parties. This is as is stipulated in Section 37 of the Punjab Land Revenue Act, 1887, which reads as under:-

“37. Restrictions on variations of entries in records.-- Entries in records-of-rights or in annual records, except entries made in annual records by Patwaris under clause (a) of section 35 with respect to undisputed acquisitions of interest referred to in that section, shall not be varied in subsequent records otherwise than by--

- a) making entries in accordance with facts proved or admitted to have occurred;
- b) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties;
- c) making new maps where it is necessary to make them.”

(Emphasis applied)

Thus, with the possession of persons other than the appellant admittedly continuing in the column of cultivation in all jamabandies prior to the year 1996-97, no such change could have been effected, without first determining as to whether such change in the entry was in accordance with either facts proved or admitted, or by recording a finding that such entries were as agreed to by all the parties interested.

As such, unless the possession of the appellant was admitted by the persons previously shown in possession of the suit land, a change in the revenue entry could only have been made by recording an order by the competent revenue authority, that the appellant was actually in possession, giving therein proof of such possession. Such proof of possession, as envisaged under Section 37(a) supra, also could not have been arrived at without hearing those already shown to be in possession in the jamabandi

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immediately prior to 1996-97. Needless to say, any agreement of the parties, in terms of Section 37(b), could also obviously be proved only upon such agreement shown to have been made before the competent revenue authority. In the present case, there was no decree or order of any competent Court or authority, led by way of evidence, on the basis of which the new entry in column No.5 of the jamabandi (showing cultivating possession), was made.

The relevant part of paragraph 7.28 of Chapter 7 (pertaining to the Record of Rights), in the Punjab Land Records Manual can also be referred to in this regard, which reads as follows:-

“7.28. Cases where no mutations are necessary. Punjab Government Letter No.144 Rev., dated 23rd December, 1914.-

With the following exceptions, no mutation of rights can be incorporated in the Jamabandi until a Revenue Officer has sanctioned it by an order recorded in the mutation register. The Jamabandi entries concerning holdings in which mutations have occurred, but on which no orders have been passed will remain unaltered, see also paragraph 7.41(1) infra. The only entries in the Jamabandi for the variation of which in subsequent records no mutation need be entered in the registers are the follows:-

- i) The entries in column 1-3 of the Jamabandi as given in paragraph 7.40 infra.
- ii) In column 4-
 - a) the name or the father's name when it has been legally changed, but in such case the former name shall continue to be shown also, preceded by the word “alias” or “formerly” (urf),
 - b) the military rank or civil title,
 - c) the place of residence,
 - d) the omission of the word “minor” and of the name of the guardian under paragraph 7.41 (4) infra of the Jamabandi form,

- e) the recasting of the form of the details of internal shares without changing the shares.
- iii) In column 5-
 - a) undisputed entries relating to cultivation by an owner shown in column 4, or by a non-occupancy tenant holding under a lease, whether oral or written, for a period not exceeding one year, provided that even for such a lease a mutation shall be entered if the owner of a joint holding to whom the tenant pays rent has to be specified.
 - b) entries relating to tenants described, otherwise than in these terms may be varied without a mutation order only to the extent that entries relating to owners may be varied under clause (ii) above.”

(Emphasis applied)

XXXXX XXXXX XXXXX XXXXX

It needs to be noticed here that the aforesaid Manual is actually a document that is described by the aforesaid name but is shown to be a Standing Order issued by the Financial Commissioner Revenue, last on 02.09.1929. Though such standing orders are not seen to be issued under any statutory provision in the Punjab Land Revenue Act, however, they take the form of executive instructions, and the Manual, accordingly, has to be treated as such.

The relevant provision referred to above, pertaining to column No.5 of the 'jamabandi' (which is the column in the record of rights showing cultivating possession on any parcel of land), again lays down that any variation in the entries cannot be made unless a mutation is entered in that regard, in the mutation register, except if they are wholly undisputed entries.

The procedure for entry in the mutation register is again contained, in detail, in Chapter 7 of the Punjab Land Record Manual.

9. Hence, obviously, with no procedure followed to enter the name of the appellant as a new entry in column No.5 of the jamabandi for the year 1996-97, as stipulated in Section 37 of the Act of 1887 and in paragraph 7.28 of the Punjab Land Records Manual, I see no error in the judgment of the learned first Appellate Court, in holding that such entry in the year 1996-97, could not be held to be proof enough of possession over the suit land, by the appellant, so as to entitle him to a decree of permanent injunction in his favour.

Therefore, with his possession, as shown in the 'cultivation column' in the jamabandi, not having been validly entered, it becomes wholly doubtful whether the appellant was actually in possession of the suit land, or the entry was only a paper transaction made, contrary to the procedure prescribed, only to help him. Thus his possession over the suit property is not proved at all.

10. Consequently, in view of what has been discussed above, finding no merit in this appeal, it is dismissed in limine, with, however, no order as to costs.

11. Obviously, the suit filed having been one only seeking permanent injunction, the observations made by this Court herein above and the learned first appellate Court, would be construed to be made only for the purpose of declining the relief of permanent injunction to the appellant-plaintiff, as per the evidence led with regard to his possession over the suit land, on the basis of the evidence led before the Courts below, in the present *lis*, more

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specifically, on the basis of the jamabandi entry for the year 1996-97, which had no legal basis. However, if in any subsequent proceedings, the appellant is able to show his possession on the basis of any entries legally and validly made, on the basis of any sale deed, or on any other valid basis, those proceedings would be influenced by what has been held hereinabove, only to the extent of the non-valid basis of the entry made in the jamabandi for the year 1996-97 and any continuation of such entries in the name of the appellant, on the basis of the first entry made in the year 1996-97. All other proof of any possession of the appellant over the suit land, would be decided as per merits and on appraisal of the evidence led with regard thereto in those proceedings, if instituted.

27.4.2016
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(AMOL RATTAN SINGH)
JUDGE