

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

RSA No.318 of 2015

Date of decision: 28.01.2016

Harbir Singh

... Appellant

Versus

Smt. Rajesh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. N.D. Achint, Advocate
for the appellant.

AMOL RATTAN SINGH, J.

The appellant has filed the present appeal against the judgments of the learned Civil Judge, (Junior Division), Gurgaon, dated 27.07.2013 and of the learned Additional District Judge, Gurgaon, dated 22.08.2014, dismissing his suit and appeal respectively, seeking permanent injunction against the respondent.

2. The case set up by the appellant-plaintiff was that he was in cultivating possession of agricultural land comprising in Khewat No.287, Khatoni No.345, Rect. No.18, Killa No.6/2 (2-0), 17 (8-0), to an extent of half share, situated at village Daula, Tehsil and District Gurgaon as a "Gair Marusi". To that effect, he led in evidence 'Jamabandis' of the years 1965-66, 1970-71, 1975-76, 1980-81, 1985-86, 1990-91, 1995-96, 2000-01, 2005-06 and 'Khasra Girdawaris' of the years 2006-07, 2011-12 and 2012-13.

3. It was contended that he (appellant-plaintiff Narayan Singh) was in actual cultivating possession of the suit property to the extent of a half share for a period of about 60 years. However, three days prior to the filing of the suit (instituted on 17.07.2009), the respondent-defendant, came on the suit land and threatened to dispossess him, though she had no right to interfere in his peaceful possession thereof. It was also alleged that she (respondent-defendant) had filed a false petition, in collusion with the Tehsildar Sohana, to change the revenue entries in her favour. Upon her refusal to his requests to desist from illegal acts, the suit was filed, seeking permanent injunction against her.

4. In the reply filed by the respondent, other than the preliminary objections on locus standi, maintainability etc., it was stated that the entries in the jamabandi (record of rights), are contrary to the actual factual position, as the revenue entries were still continuing in the name of the appellants' father, despite the fact that he had died about 25 years back.

It was further averred that the appellant is neither owner, nor in possession of the suit property and consequently the respondent had filed a petition in the Court of the Assistant Collector Ist Grade, Sohana, for rectification of such entries.

The contents of the plaint were obviously denied by the respondent.

5. The following issues were framed by the learned Civil Judge:-

“1) Whether the plaintiff is in possession of the suit

property as gair marusi after the death of his father Narayan Singh?OPP

2) Whether the suit is not maintainable in the present form?OPD

3) Whether the plaintiff has no locus standi and cause of action to file the present suit?

4) Whether the plaintiff has not come to the Court with clean hands?OPD

5) Relief.”

The appellant examined himself as PW-1 and one Vikram Singh and Suraj Singh as PW-2 and PW-3 respectively. He also relied upon certified copies of 'jamabandis' for the years 2000-01, 2005-06, as also from the years 1965-66 to 1995-96. He also produced certified copies of the 'khasra girdawaris' for the years from 23.09.2006 to 21.02.2007, 2005-06, 2011-12, 2012-13, by way of exhibited documents.

The respondent having chosen not to appear before the Court, after some period she is shown to have been proceeded against ex parte, vide order dated 03.11.2010.

6. The appellant and the other two witnesses who testified in his favour, deposed that earlier the appellants' father was in actual cultivating possession of the suit property to the extent of a half share for a period of about 60 years and thereafter, the appellant along with his brother Ombir, were in actual cultivating possession thereof to the same extent.

The learned Civil Judge, upon appraisal of the evidence led by the appellant, found that though the appellant had claimed possession

of a half share as a 'gair marusi', he had not disclosed his status on the land as that of a tenant. That Court therefore, relied upon a judgment of a Single Bench of this Court in the case of Ram Karan Vs. Financial Commissioner, Haryana and others, 1980 PLJ 295, to hold that the revenue entry in the revenue record as 'gair marusi' is not sufficient to confer the status of a tenant, as even persons in authorized possession are described as such. Thus, the Civil Judge held that unless the rent column discloses liability to pay rent, an entry in the column of cultivation of land cannot confer the status of a tenant upon a person.

Factually, it was found that column No.9 of the record of rights (jamabandi) was silent about the liability of the appellant to pay rent and as such, he could not be construed as a tenant over the suit property. Further, even though the appellants' father had admittedly died 25 years earlier, he was continuously shown to be in actual cultivating possession of the suit property, to the extent of a half share. Thus, it was held that the revenue entries are actually contrary to the factual position and cannot be relied upon and the appellant had not filed any petition for rectification of the revenue record. Consequently, that Court held that the appellant was not a tenant on the property. He had to be deemed to be either a trespasser or to be in unauthorized possession. Therefore, since no injunction can be granted against a true owner to a trespasser, that Court rejected the claim of the appellant for grant of a decree of a permanent injunction, further stating that he had not been able to show any possession over a specific part of the suit property.

It was also held that the appellant had no locus standi to file

the suit and it was, therefore, not maintainable. Consequently, the suit was dismissed.

7. In the appeal filed by the appellant before the lower appellate Court, the learned Additional District Judge, Gurgaon, in his judgment dated 22.08.2014, discussed the entries in the 'jamabandis' of different years and found that in the year 1965-66, there was an entry showing Bani Singh Hissedar of half share and Narayan Singh son of Bhagwana son of Ishar Singh of half share, 'gair marusi'. In the column of cultivation, it was stated that Bani Singh and Narayan Singh were paying "batai tihai bashrah khata no." A similar entry had been recorded in 1970-71 and thereafter in the year 1975, it was recorded in the column of cultivation as "kudkasht half share Narayan Singh son of Bhagwana Singh son of Ishan gair marusi half share" and again in column no.9 (with regard to payment of rent), there was an entry of 'gair marusi bashrah batai khata no." The same entries continued for the years 1980-81, 1985-86, 1990-91, 1995-96 and 2005-06. However, in the year 2000-01, the 'jamabandi' contained an entry to the effect "kudkasht malkan half share and Narayan Singh son of Bhagwana half share gair marusi" in the column showing cultivating possession. In column No.9, the entry for that year was the same as for the earlier years, except that the word 'gair marusi' was missing in that column.

The first appellate Court further held that no possession of the appellants' father was shown on any specific part of the land and that even in the entry of cultivation, he was shown to be in cultivating possession, along with the owners themselves.

The argument that respondent Smt. Rajesh was not recorded as the owner, and therefore, the finding of the lower Court that no injunction can be granted against a true owner, was not a finding based upon fact, was negated by the first appellate Court, by holding that the respondent-defendants' husband, Jai Chand, was shown to be one of the shareholders in the 'jamabandis' for the year 2005-06 and as such, she being a first class heir to her husbands' property, she cannot be held to be not having a title in the land, simply on the basis of an omission in the revenue record, in recording her name after her husbands' death, in the column of ownership.

8. As was found by the learned Civil Judge, the first appellate Court also recorded as a finding of fact, that the appellants' father Narayan Singh had died about 25 years ago, but despite that his name continued to be recorded in the column of cultivation till date. Hence, while noticing that a presumption of truth is attached to entries in the revenue record, the lower appellate Court also held that where the entries were obviously incorrect, such presumption could not be extended to infer the possession of the appellant, only because he was the legal heir of Narayan Singh, on a plea that the tenancy was inherited. It was further held by that Court that because Narayan Singh had not been shown to be in actual physical possession of specific khasra numbers, measuring 10 kanals, his exclusive possession as a tenant was not proved in any manner; and further, the appellant in any case had failed to prove his own actual possession of any specific area, at the time of filing of the suit.

The lower appellate Court relied upon a judgment of the Supreme Court in the case of **Yamunanagar Improvement Trust Vs. Kharaiti Lal**, (2005) 2 RCR (Civil) 716, to hold that in a suit for permanent injunction, it is the duty of the plaintiff to prove that the property remained in his possession, in which the defendant had no title or interest.

09. The argument made on behalf of the appellant, that the respondent had admittedly filed a suit for correction of the revenue record, which virtually amounted to admission of the appellants' possession, was also negated by the lower appellate Court, on the ground that simply the filing of an application for correction of a record, cannot amount to admission to another party's possession over the property in question.

10. Before this Court, Mr. N.D. Achint, learned counsel appearing for the appellant, submitted that he could say nothing to the contrary to what has been held by the learned Courts below, as regards the factual position on the entries in the revenue record. He further submitted that in view of the same, he also could not find any real fault in the reasoning adopted by those Courts, to reject the claim of the appellant-plaintiff. He, however, submitted that the appellants' father admittedly being shown as a cultivator to the extent of a half share of the suit property, the appellant inherited that right at least, and consequently, he could claim injunction against any person interfering with that right of cultivating possession.

11. Having considered the aforesaid argument of the learned

counsel, whereas I am in agreement that even a cultivator admitted to be in such possession has a right to protect such possession and to seek injunction against a person disturbing that possession, except in due course of law; however, it needs to be noticed that as admitted by the learned counsel before this Court, even the appellants' father was shown as a 'gair marusi' in the revenue record.

Strangely, though the learned Civil Judge (Jr. Divn.) has stated that Column No.9 of the 'jamabandis', pertaining to payment of rent, is silent, the learned first appellate Court has specifically recorded that in Column No.9 of the 'jamabandis' for the years 1975-76 (Ex. P-6), an entry of "gair marusi bashrah batai khata no." is entered, with similar entries in subsequent 'jamabandis' from the years 1980-81 till 2005-06. Obviously, therefore, the finding that the appellants' father was not a tenant, are apparently incorrect. However, that issue is not being gone into, in view of the fact that the appellant filed a suit seeking permanent injunction against the respondent but other than showing entries in favour of his father, he could not show by any evidence, other than oral evidence by way of his own testimony and that of the two witnesses examined by him, that he was ever in possession of the suit land to any extent, whether as a joint cultivator, or with exclusive possession of any part of the land. The Courts below are obviously correct on a point of a fact, that the revenue entries do not reflect the correct possession, since they continued to show the appellants' father in cultivating possession to the extent of a half share on 'batai' (as a share cropper). However, to repeat, that does not raise an un-rebuttable presumption that the

appellant also stepped into his fathers' shoes in the same capacity, with no documentary evidence led to that effect.

I am also in agreement with the learned first appellate Court, that as regards the application made by the respondent for correction of the revenue entries, it can by no stretch of imagination *ipso facto* prove that the appellant is in possession of any part of the suit land, even as a cultivator. The application could simply have been made only to correct the entries showing the appellants' father to be a cultivator on payment of 'batai', a quarter century after his death.

Further, though the interpretation of the term 'Gair Marusi' (which is the status shown, of the appellants' father), has been taken to mean a tenant at will, in some judgments, however, a literal interpretation of the term would show that it means non-ancestral. The word 'marusi' is translated to be hereditary/ancestral/patrimonial or by implication, received by inheritance. The word 'gair' of course is used in conjunction with another word to negative the meaning of that other word. Hence, in the context of 'gair marusi' it would translate as non-hereditary. In the present context, it would translate to mean that the cultivation rights (in whatever capacity), that the appellants' father possessed, were non-heritable, or at least were not inherited by him. However, that issue is not being gone into in detail, in view of the fact that the appellants' suit was simply for permanent injunction against the respondent, for which he only had to prove his possession over the suit land. That not having been proved, the other issues, in the opinion of this Court, would be academic for the purpose of these proceedings at

least, the suit not having been filed, seeking any kind of declaration.

13. Consequently, finding no merit in the appeal, the same is dismissed in limine, with no order as to costs.

28.01.2016

Nitin/vegarg

(AMOL RATTAN SINGH)
JUDGE