

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

**R.S.A No.1303 of 2014 (O&M)
Date of decision :16.02.2016**

Jagdish and others

..... Appellants

Versus

Kanhiya

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

DARSHAN SINGH,J

CM No. 3059-C of 2014

This application has been filed for bringing on record the legal representatives of Budhi son of Rattan-defendant no.3.

Heard.

For the reasons mentioned in the application, the application stands allowed, subject to all just exceptions and the legal heirs of deceased-Budhi as mentioned in para no. 3 of the application are impleaded and allowed to pursue the appeal.

R.S.A No. 1303 of 2014

The present appeal has been preferred against the judgment and decree dated 06.11.2013 passed by the learned District Judge, Palwal, vide which the appeal preferred against the judgment and decree dated 19.07.2011, passed by the learned Addl.Civil Judge (Sr. Division), Hathin, has been allowed.

2. For the sake of convenience, the status of the parties is being

mentioned as in the original suit.

3. As per the case set up by the appellants-plaintiffs initially one Chunni was in cultivating possession of the land in dispute as “*Gair Marusi Tenant*”. After his death his three sons namely Gokal, Rattan and Chhidda started cultivating the same in equal shares. Due to some clerical and inadvertent mistake, the name of Rattan, the father of appellants was not shown in the subsequent Jamabandies for the year 1946-47 onwards. Though, his name figures in the Jamabandies for the year 1938-39 and 1941-42. From the year 1946-47 onwards only Gokal and Chhidda were shown to be in possession of the suit land in equal shares. Chhidda also expired and his cultivating possession was mutated in favour of his wife Smt. Kasturi. In the meanwhile, Gokal also expired and his cultivating possession devolved upon respondent-defendant Kanhiya. In consolidation, the new members were reflected in the suit land showing defendant Kanhiya and his brother Ram Saroop to be in cultivating possession of the suit land to the extent of $\frac{1}{2}$ share and remaining $\frac{1}{2}$ share was shown to be in possession of Smt. Kasturi, widow of Chhidda despite the fact that Rattan was also cultivating it to the extent of $\frac{1}{3}$ rd share. It is further pleaded that after the death of Smt. Kasturi, the widow of Chhidda her tenancy rights were inherited by the appellants and respondent to the extent of $\frac{1}{6}$ th share each. Thus, the appellants pleaded that they have become in actual, physical possession of the suit land to the extent of $\frac{1}{2}$ share. The revenue entries not depicting their possession are illegal and are not binding on their rights. Hence, the suit for declaration with consequential relief of permanent injunction.

4. Defendant-respondent contested the suit on the plea that the appellants had no concern whatsoever with the suit land as he is in exclusive possession of the same being a co-sharer in the *Shamlet Deh* of the Village Mandkola. The entries in the revenue record are factually correct. He also raised certain legal and preliminary objections.

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

1. Whether the plaintiffs are entitled to a decree for declaration that they are the owners in possession to the extent of half share in the suit property and revenue entries are liable to be rectified accordingly?OPP
2. Whether the plaintiffs are entitled to a decree for permanent injunction restraining the defendant from interfering in their possession over the suit property?OPP
3. Whether the suit of the plaintiffs is not maintainable?OPD
4. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the appellants-plaintiffs vide judgment and decree dated 19.07.2011.

7. Aggrieved with the aforesaid judgment and decree, respondent-defendants preferred the appeal and the same was allowed by the learned District Judge, Palwal vide impugned judgment and decree dated 06.11.2013. Hence this Regular Second Appeal.

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

9. Initiating the arguments, learned counsel for the appellants

contended that Rattan, the father of appellants was in possession of the suit property along with his brothers Gokal and Chhidda. His name was very much entered in the Jamabandies for the year 1938-39 Ex.P-2 and 1942-43 Ex.P-12. However, his name was wrongly deleted from the Jamabandi for the year 1946-47 from the column of cultivation and the said mistake was repeated in the subsequent Jamabandies. Learned counsel for the appellants contended that the appellants were not aware about the mistake in the revenue record and they only came to know when the respondent-defendant tried to dispossess them on the basis of the wrong entries. He contended that in-fact after the death of their father Rattan, the appellants are in continuous cultivating possession of the suit property as *Gair Marusi*.

10. I have duly considered the aforesaid contentions.

11. This fact is not disputed that the land in dispute is owned by the Gram Panchayat. Rattan, the father of appellants has not been shown in cultivating possession of the property right from the year 1946-47 till date. After the year 1946-47, various Jamabandies have been prepared by the revenue department. There is no dispute with the proposition of law that presumption of truth is attached to the Jamabandies entries. Though, the same is rebuttable and the strong evidence is required to rebut so long standing revenue entries. But, the evidence adduced by the appellants-plaintiffs is not of that nature. The contentions raised by learned counsel for the appellants that appellants had no knowledge about the wrong entries in the revenue record do not appeal to the reasons. It is an admitted fact that the consolidation has also taken in the village after the

year 1946-47. At the time of consolidation proceedings every land owner and occupier remains in touch to safeguard his interest. The appellants-plaintiffs have not even mentioned any exact or approximate date when they acquired the knowledge with respect to the wrong entries in order to evade the law of limitation.

12. The appellants have also not produced any other corroborative evidence except the oral statement of PW-1 Roshan and PW-2 Chhuttan, one of the plaintiff-appellant. If the appellant would have been in possession of the suit property for such a long period, there must be some other documentary evidence to prove their possession. Admittedly, the land in dispute is owned by the Gram Panchayat and it is alleged that they are in possession of the suit property as *Gair Marusi* Tenant. So, they might have paid any rent or *batai* or lease money at any point of time to the Gram Panchayat. But, no such documentary evidence has been produced. Thus, the appellants-plaintiffs are not proved to be in possession of the suit property and no fault can be found with the long standing revenue entries in favour of respondents. Thus, I have no reason to differ with the well reasoned findings recorded by the learned First Appellate Court.

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

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

February 15, 2016

s.khan

(DARSHAN SINGH)
JUDGE