

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

**R.S.A No. 4911 of 2015 (O&M)
Date of decision :03.02.2016**

Sunder Singh

..... Appellant

Versus

Prabhu Dayal etc.

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.J.S.Hooda, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 08.05.2015 passed by the learned Additional District Judge(1), Palwal, vide which the appeal preferred against the judgment and decree dated 19.08.2013, passed by the learned Addl. Civil Judge (Sr. Division), Hodal, has been dismissed.

2. Defendants-respondents have filed the suit for declaration to the effect that they are owner in possession of the suit land detailed in para no.1 of the plaint and the order of Assistant Collector- II Grade, Hodal dated 21.03.2006 and Report Rojnamcha no.1126 correcting the entries in Khasra Girdawri are illegal, null and void and not binding on the rights of the plaintiffs-respondents. They also sought a decree for permanent injunction restraining the appellant-defendant from interfering into their peaceful possession over the suit land detailed and described in

para no.1 of the plaint situated in the revenue estate of village Hodal Patti Bedha, Tehsil Hodal, District Faridabad.

3. As per the case set up by the plaintiffs-respondents, they are owner in possession of the suit land measuring 3K-4M comprised of Khewat No.828, Khatoni No.963, Rect. No. 173, Killa No.22/1 (3-4) situated within the revenue estate of village Hodal Patti Bedha, Tehsil Hodal. The name of one Ramchand son of Kanwar Singh (since deceased) was recorded as Gair Marusi in the column of cultivation wrongly and illegally. He had never been in possession of the suit land. The same is owned and possessed by the plaintiffs. Said Ramchand has died since long and his legal heirs had no concern with the possession of the suit land. Defendant-appellant filed an application for correction of the Khasra Girdawri entries. Assistant Collector-II Grade, Hodal ordered for correction of Khasra Girdawri entries vide impugned order dated 21.03.2006 without impleading the plaintiffs as party to the proceedings and without giving them any notice. Defendant had further got entered a Report Rojnamcha bearing no.1126 dated 21.07.2006 in the record of Halka Patwari. It has been further pleaded that the aforesaid order dated 31.03.2006 and Report Rojnamcha are illegal, null and void and have no effect on the ownership and possessory rights of the plaintiffs.

4. Appellant-defendant contested the suit on the grounds *inter alia* that defendant is in possession of the suit property as “Gair Marusi Basahrah Malkan”. The plaintiffs or their predecessors had never remained in possession of the suit land. The appellant-defendant has been coming in possession of the suit land for the last 40 years. He filed an

application for correction of the Khasra Girdwari in the Court of Assistant Collector-II Grade, Hodal. The father of plaintiffs was very much party to the said case as respondent no.8. He engaged the counsel and contested the case. Thus, the order passed by the Assistant Collector-II-Grade, Hodal is legal, valid and binding on all the concerned including the plaintiffs. The entry showing the defendant to be in cultivating possession of the suit land is legal and valid. Defendant-appellant also raised the legal and preliminary objections and pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 22.04.2009:-

1. Whether the order of Assistant Collector Second-Grade Hodal dated 21.03.2006 and Rapat rojnamcha No. 1126 and Girdawari entries on the basis of order dated 21.03.2006 are illegal, null and void and are liable to be set aside?OPP
2. Whether the plaintiff is entitled to a decree for permanent injunction on the grounds as mentioned in the plaint?OPP
3. Whether present suit is not maintainable?OPD
4. Whether plaintiffs have not locus standi and cause of action to file the present suit?OPD
5. Whether the suit is bad for necessary parties?OPD
6. Whether this Court has no jurisdiction to try the present suit?OPD
7. Relief.

6. On appreciating the evidence and material on record, the learned trial Court partly decreed the suit. The plaintiffs were held to be the owners of the suit land. The order dated 21.03.2006 passed by the Assistant Collector-II Grade, Hodal and consequential Report Rojnamcha no. 1126 and Khasra Girdawri entries on the basis of aforesaid order were

held to be illegal, null and void having no effect on the rights of the plaintiffs. However, as the plaintiffs were not able to establish their possession, so the consequential relief of permanent injunction was declined to them.

7. Aggrieved with the aforesaid judgment and decree dated 19.08.2013 passed by the learned trial Court, the appellant-defendant preferred the appeal, which was also dismissed by the learned Additional District Judge, Palwal, vide impugned judgment and decree dated 08.05.2015. Hence this Regular Second Appeal.

8. I have heard Mr. J.S.Hooda, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contented that the learned Courts below have wrongly set aside the order passed by the Assistant Collector-II Grade. He contended that the appellant-defendant has moved the application for correction of Khasra Girdawri entries on the basis of revenue record, wherein Hardev, the father of plaintiffs-respondents was shown as the owner of the suit land. So, he was impleaded as party to the proceedings. He appeared and contested the proceedings. Thus, he contended that no illegality has been committed by the Assistant Collector-II Grade, Hodal.

10. I have duly considered the aforesaid contentions.

11. Plaintiffs-respondents have challenged the order dated 21.03.2006 passed by the Assistant Collector-II Grade, Hodal on the plea that thought they were owner of the land, but they were not impleaded as a party to the proceedings for correction of Khasra Girdawri entries.

Learned Courts below have accepted this plea raised by the plaintiffs-respondents and held the order dated 21.03.2006 passed by the Assistant Collector-II Grade, Hodal illegal. Consequential Report Rojnamcha and Khasra Girdawri entries were also held to be illegal.

12. There is no dispute with the proposition of law that the effected person must be impleaded as a party to the proceedings and he/they should be afforded an opportunity of being heard. This is the minimum and basic requirement of the principles of the natural justice. In the instant case, it is an admitted fact that plaintiffs-respondents were not impleaded as a party to the proceedings for correction of the Khasra Girdawri entries, even though they were the owners. The mutation no.4121 Ex.P-5 with respect to the ownership of the land in dispute was entered and sanctioned in their favour on 15.05.1999 on the basis of the Civil Court Decree passed in Civil Suit No. 823 dated 09.10.1993. So, the plaintiffs-respondents have become the owner of the suit land. Impleading their father Hardev, who was not the owner of the land in dispute will not cure the legal defect. Thus, as the impugned order dated 21.03.2006 has been passed by the Assistant Collector-II Grade, Hodal at the back of the plaintiffs-respondents and without affording them any opportunity of being heard in violation of the principles of the natural justice, the same has been rightly held to be illegal by the learned Courts below. The consequent Report Rojnamcha no.1126 and Khasra Girdawari entries have also been rightly declared illegal. Thus, the concurrent findings based on evidence available on record cannot be interfered in the second appeal while exercising the limited powers under Section 100

CPC.

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 03, 2016

s.khan

(DARSHAN SINGH)
JUDGE