

In the High Court of Punjab and Haryana at Chandigarh

**R.S.A. 5155 of 2015 (O&M)
Date of Decision: January 12, 2015**

Puran Singh

... Appellant

Versus

Shingar Singh and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Mr. A.S. Gill, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J.(Oral)

CM-12306-C-2015

Having heard learned counsel for the appellant and for the reasons recorded in the Civil Misc. application, same is allowed. Delay of 40 days in filing the appeal is condoned.

RSA No. 5155 of 2015

This regular second appeal has been preferred by the appellant-defendant no.1 against the judgment and decree dated 01.08.2013 passed by learned Civil Judge (Junior Division), Fazilka whereby suit filed by the plaintiffs/respondents no. 1 to 3 for permanent injunction has been decreed, as well as, against the judgment and decree dated 01.12.2014 passed by learned Additional District Judge, Fazilka, whereby appeal preferred by the appellant/defendant no.1 has been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiffs filed a suit against defendants for permanent injunction restraining them from illegally and unlawfully causing any type of interference into the peaceful cultivating possession of the plaintiffs and from dispossessing them from land measuring 3 kanals as detailed in the headnote of the plaint, as per jamabandi for the year 2006-2007, on the ground that previously father of the plaintiffs, namely, Bakar Singh son of Beela Singh, was cultivating possession of suit land as gair marusi for the last many years and the suit land was being cultivated by him with the help of plaintiffs regarding which entry was incorporated in column no.5 of jamabandi for the year 2006-07. After the death of Bakar Singh, the plaintiffs are cultivating the suit land as gair marusi under the Provincial Government. It was further averred in the plaint that the defendants have no concern or connection either with the ownership or possession of the suit land but they are adamant to interfere into the peaceful cultivating possession of the plaintiffs over the suit land illegally and forcibly. Hence, suit was filed.

Upon notice, defendants appeared and filed joint written statement taking preliminary objections that suit is not maintainable in the present form; plaintiffs have no cause of action and locus standi to file the present suit and have concealed the true and material facts. It is averred that one of the plaintiffs, namely Shingara Singh has already filed a suit for permanent injunction against the defendants with regard to land measuring

16 kanals and therefore, both the suits are not maintainable. The defendants are in possession of the suit land but the same is being wrongly recorded in the name of Bakar Singh in the revenue record and on the basis of those entries, the plaintiffs want to take possession of the suit land.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “1. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP*
- 2. Whether suit is not maintainable in the present form? OPD*
- 3. Whether plaintiffs have no locus standi and cause of action to file the present suit? OPD*
- 4. Relief.”*

The Court of first instance, after appreciating the evidence on record, decreed the suit vide judgment and decree dated 01.08.2013. Against that, defendant no.1 preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 01.12.2014. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellant has submitted that the following substantial questions of law formulated in para no. 5 of grounds of appeal, arise for consideration in this second appeal:-

- “a) Whether the judgment and decree impugned in the present appeal are sustainable on the face of perversity?*
- b) Whether the respondent can back-out from his bold statement especially when it has been given in the affidavit shape of the testimony?*
- c) Whether the respondent is entitled for decree of injunction especially when they admitted the possession of the appellant in the suit land?*

- d) *Whether merely a jamabandi for the year 2006-07 is sufficient to prove the possession especially when the same is rebuttable?*
- e) *Whether injustice can be granted merely on the basis of reflection of the possession in the revenue record?"*

Learned counsel for the appellant contended that the findings recorded by both the Courts below are against law, without appreciation of facts and not sustainable in the eyes of law.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

The Court of first instance, after appreciating the evidence on record, have recorded findings of fact, which are as under:-

"12. The plaintiffs in order to prove his possession over the suit land have led oral as well as documentary evidence. In oral evidence, plaintiff no.1 Shingar Singh has examined himself as PW1 as well as Sher Singh as PW-2. In their examination-in-chief, they have stated that the suit property is in possession of the plaintiffs and in documentary evidence, the plaintiffs have proved on record jamabandi for the year 2006-07 as Ex.P1. A careful reading of the same reveals that the suit property is recorded as ownership of Provincial Govt. but the same is in possession of Bakar Singh, father of the plaintiffs. Correspondingly, khasra girdawari for Sawni 2011 Harri 2012 Ex.P2 also shows that Bakar Singh, father of the plaintiffs through Provincial Govt. is shown to be in possessio of suit property as gair marusi tenant. The contention of the defendants is that plaintiff no.1 Shingar Singh has already filed a suit for permanent injunction against the defendants with regard to 16 kanals of land and the said fact has not been disclosed in the present suit and as such, the plaintiffs have not come to the Court with clean hands. However, the defendants have failed to bring on record the copy of said suit and even

the defendants have also failed to specifically mention the land regarding which plaintiff no.1 has allegedly filed the above said suit. As discussed above, Bakar Singh son of Beela Singh, father of plaintiffs was recorded to be in possession of suit land as gair marusi belonging to Provincial Govt. It is also specifically deposed that said Bakar Singh has expired six months ago and therefore, the plaintiffs being legal heirs of said Bakar Singh have come into possession of the suit land. The defendants have not relied upon any document showing their possession over the suit land and therefore, they have no concern or connection with the suit land. It is admitted proposition of law that entries in jamabandi carries with them presumption of truth. Though such presumption is rebuttable in nature but the defendants failed to lead any evidence either oral or documentary to rebut the presumption attached with the jamabandi Ex.P1 as well as Khasra girdawari Ex.P2 where the possession of Bakar Singh, father of the plaintiffs through Provincial Govt. is specifically mentioned. Moreover, in the cross-examination of plaintiff no.1 and his witness, nothing favourable to the defendants has come out the benefit of which could be given to them. Further, the defendants have also failed to lead any evidence to corroborate the defence taken by them in the written statement.

13. Hence, on the basis of un rebutted and unchallenged evidence led by the plaintiffs and the revenue record in favour of Bakar Singh, father of the plaintiffs where possession of Bakkar Singh is duly recorded, the plaintiffs are successful in proving that after the death of Bakar Singh, they are in possession of the suit land and the defendants have no concern or connection with the same.....”

Said findings have been affirmed by the lower appellate Court.

Concurrent findings of fact have been recorded by both the Courts below. Findings recorded by the Courts below are based on documentary evidence. Learned counsel for the appellant could not show

that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, said findings of fact do not warrant interference in second appeal. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

CM-12307-C-2015 has been filed for leading additional evidence regarding affidavit dated 08.05.2013 and agreement for transfer of possession. Said documents are not *per se* admissible in evidence. Hence, the application is also dismissed.

January 12, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge