

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.903 of 2014 (O&M)

Date of Decision: 24.05.2016

Raj Singh and others

.... Appellants

Vs.

Zila and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Manwinder Singh Dalal, Advocate
for the appellants.

Amol Rattan Singh, J.

This is the second appeal of the plaintiff (represented by his LRs), in a suit for possession that he had filed against respondents No.1 to 4 herein (described in the judgment of the Courts below as defendant set No.1 and hereinafter to be referred to as the defendants), seeking possession of a “Gair Mumkin Bara”, measuring 16 marlas, described in detail in the plaint filed by the present appellants-plaintiffs (hereinafter referred to only as the plaintiffs).

(The suit was originally filed by Jai Singh, father of the appellants, but at that stage itself he was substituted as the plaintiff, through his legal representatives, i.e. the present appellants)

2. The facts of the case, as taken from the judgment of the learned Additional Civil Judge (Senior Division), Narwana, are that the claim of the plaintiffs was that he was the owner of the aforesaid 'bara', in possession

thereof, till about two years prior to the filing of the suit (on 05.08.2006). The defendants allegedly illegally encroached upon the “bara”/“gher” and constructed their residential house on it and despite the request of the plaintiffs, they did not vacate the same, leading to the filing of the suit. It was further, naturally, contended that defendants No.1 to 4 had no right, title or interest in the suit property because the lawful owners thereof were actually the plaintiff and defendants No.5 to 17 (referred to in the judgments of the Courts below as defendants set No.2.)

3. Upon notice issued to them, the defendants appeared and filed a written statement, stating that actually it was the plaintiffs who had no legal right to the suit property which was in possession of the defendants & their ancestors since long and that they were, in fact, in open and hostile possession thereof since the time of their fore-fathers, without payment of any rent. It was further stated that actually the father of the defendants had also purchased the property from the daughters of one Ramji Lal, before consolidation of holdings, by way of an oral agreement, but the revenue entries were not corrected 'properly' in their names.

It was further contended that defendant Mewa Singh (present respondent No.2) had constructed his house for the past 40 years and had also installed a flour mill and was paying the electricity bill, in respect of an electricity connection in the name of the father of the defendants.

It was further contended that the “fard badar” now made in the name of the plaintiffs was wrong and even the demarcation was not carried out as per the provisions of Section 101 of the Punjab Revenue Act, 1887,

as even notice of the demarcation had not been given to the defendants.

4. On the aforesaid pleadings of the parties, the learned Civil Judge framed the following issues:-

- “1. Whether plaintiffs are entitled for possession of suit land as prayed for? OPP
2. Whether suit of the plaintiffs is not maintainable in the present form? OPD
3. Relief.”

5. The plaintiffs examined one of the legal representatives (presently appellant No.2, Inder Singh) of the original plaintiff (Jai Singh), who testified in terms of the plaint and further stated that they were owners alongwith defendants set No.2, by virtue of jamabandi Ex.P1 and the “fard badar” Ex.P2.

He further testified that in the report of the local commissioner, dated 04.07.2006, the defendants had been held to be in unauthorised possession of the property. However, in his cross-examination, this witness (PW1) admitted that the property was purchased by them, though he did not know from whom and further, that it was only after the demarcation report, that the plaintiffs came to know about the alleged unauthorised possession of the defendants.

PW2 was one Jodh Singh, brother of the original (late) plaintiff, i.e. uncle of the present appellant. He also testified to the same effect, including the admission that before the demarcation report, they were not aware of the unauthorised possession of the defendants.

One Birbhan, Sadar Kanungo, appeared as PW3 and proved the

demarcation report, Ex.P3.

6. For the defendants, the 2nd defendant, Mewa Singh, testified in terms of the written statement and stated that other than the fact that the suit property had been purchased from the father of three ladies, i.e. from Ramji Lal, before consolidation of holdings, the defendants were in any case in open and hostile possession to the knowledge of everyone, including the plaintiff, for the past more than 40 years.

DW2 Zile Singh, i.e. defendant No.1, also testified in the same terms.

7. Upon appraisal of the aforesaid evidence, the learned Civil Judge came to the conclusion that admittedly the possession of the defendants No.1 to 4 had been continuing over a long period of time, as admitted by the plaintiffs in cross-examination, to the effect that they only came to know of the encroachment on their land after the demarcation report, after which a “fard badar” was got made from the revenue authorities, for correction of the jamabandi for the year 2000-01, Ex.P1.

The “fard badar” not being a document of title but only a correction of revenue record, it did not reflect any title, the plaintiffs were to actually prove their title from a document other than the “fard badar”. However, they had not even placed on record the jamabandi for the year 2005-06, though the suit was filed in the year 2006.

Further, no sale deed with regard to purchase of the suit property at any stage by the plaintiffs, had been placed on record by way of evidence. Thus, even the reliance on the demarcation report, was misplaced.

Hence, the suit of the plaintiffs was dismissed.

8. In the first appeal filed by the plaintiffs, the learned District Judge, Jind, on appraisal of the evidence, found that in the jamabandi, Ex.P1, the names of Mangu, Tej Singh and Ram Singh were shown to be present, though the name of plaintiff Jai Singh was not shown even in the said jamabandi. Further, even the “fard badar”, Ex.P2, was not a proved document by the competent authority, though the Halqa Patwari had made a report for correction of the revenue record, which was endorsed by the field Kanungo; but thereafter, no order sanctioning the correction was shown to have been passed.

In the additional evidence led by the plaintiffs, (by which the jamabandi for the year 2010-11, was placed on record before the first Appellate Court) the name of plaintiff Jai Singh was shown in the column of ownership, along with the aforesaid Mangu, Tej Singh and Ram singh, all in equal shares, to the extent of 2/10th of the property, on the basis of which a mutation of inheritance, Ex.P5, was sanctioned in favour of his legal heirs (LRs/appellants before this Court).

However, the lower Appellate Court held that the jamabandi for the year 2010-11 also was of no help to the plaintiffs, because in the copy of the jamabandi for the year 1995-96, tendered by the defendants by way of rebuttal to the additional evidence, the name of Jai Singh was not present in the column of ownership.

In the column of remarks in the jamabandi for the year 2010-11, there was no justification given for the entry of Jai Singhs' name,

because there was no mention even of the “fard badar”, Ex.P2.

9. It was still further noticed by the lower Appellate Court, that even in the said “fard badar”, there was a cutting to substitute the name of Jai Singh and if both the documents, Exs.P1 and P2 were co-related, it transpired that the name of Tej Singh had been changed to Jai Singh, with no plausible explanation for the same. Yet further, in the jamabandi, Ex.P1, the name of the vendor of the suit land was shown to be Santa Singh, whereas in Ex.P4, the name of the vendor was shown to be Smt. Chameli, “Hisedar”.

Hence, that Court held that no reliance could be placed even on the said jamandies.

10. The rejection of the demarcation report Ex.P3, by the Civil Judge, was also upheld by the first Appellate Court, for the same reason, that in the absence of proper proof of ownership of the suit property, a demarcation report could not be relied upon. The learned District Judge also noticed that even in the said report of the local commissioner, it had been mentioned that Muni, wife of Hari Ram, and others were shown to be owners of the suit property, with no mention of Jai Singh.

Again, no sale deed showing purchase of the suit property by the plaintiffs, having been led by way of evidence, with not even the year of purchase proved even by the oral testimonies, by the plaintiffs, the first appeal was also dismissed.

11. Before this Court, alongwith the appeal filed, the appellants have filed yet another application for leading additional evidence.

Though not specifically mentioned in the order dated 17.02.2014, by which notice was issued in the main appeal, the essential contents of the application seeking to lead additional evidence were noticed and therefore, notice of the application also is deemed to have been issued, to which a reply has also been filed by the respondents No.1 to 4-defendants.

12. Mr. Dalal, learned counsel for the appellants submitted that by the said application, the appellants plaintiff seek to bring on record documents showing purchase of the suit property by the predecessors-in-interest of the appellants, including a sale deed dated 05.06.1974, copies of the register of mutation showing mutation entries of 1974 and jamabandies for the year 1980-81, 1985-86, 1990-91 and 2005-06. Thus, he submitted that since the Courts below held that the appellants could not show their title to the suit property, by way of any sale deeds or even revenue record prior to the correction made, i.e. the “fard badar” Ex.P2, and the suit was dismissed only on that ground, the said documents are essential for just decision of the appeal.

He further submitted that, in fact, the name 'Tej Singh' in the earlier jamabandies, was wrongly entered and it was actually Jai Singh only, whose name had been entered as Tej Singh.

He pointed to the memo of parties to show that, through out, the appellants' father, i.e. Jai Singh, has been shown to be son of Biru Singh, as also reflected in the jamabandies.

13. Mr. Surinder Gaur, learned counsel for respondents No.1 to 4,

on the other hand, submitted that at this stage, of the second appeal, the plaintiffs cannot be allowed to lead yet more additional evidence, they already having once availed that opportunity before the learned lower Appellate Court. He submitted that as a matter of fact, the filing of yet another application to lead additional evidence, is only a delaying tactic, to bring pressure upon the respondents-defendants to part with some consideration. Thus, he submitted that the application (CM No.2066 of 2014) be dismissed.

14. As regards the main appeal itself, learned counsel for the appellants argued in terms of the contentions raised before the lower Courts, and to the effect that the appellants having proved at least now, by way of the documents sought to be placed on record, that as they are the true owners of the suit property, the suit for possession was very much liable to be decreed in their favour.

Learned counsel for respondents No.1 to 4, on the other hand, submitted that though, in any case, the additional evidence at this stage would be highly belated, the respondents-defendants No.1 to 4 having been found to be in actual possession of the suit property for long, the appeal in any case deserves to be dismissed.

15. Having considered the arguments, as also the judgments of the learned Courts below, as regards the application for leading additional evidence, I agree with the learned counsel for the respondents, that though otherwise the additional evidence sought to be led, may be germane to the issue and on that count, the application should allowed, however, taking up

the merits of the case alongwith, I see no reason to allow the application at this belated stage, as actually, it would serve no purpose.

16. Firstly, whether Tej Singh and Jai Singh were the same persons or it was only a clerical error due to which the name was wrongly shown in the earlier jamabandies, which needs to be corrected, is not proved by any evidence. Though, if the matter has to be remitted, or evidence is to be recorded in that respect by this Court, possibly that issue can be resolved.

It may be noticed here that even in the jamabandi for the year 2010-11, Ex.P-4 before the lower appellate Court, that learned Court noticed that Jai Singhs' name was shown along with Tej Singh and others. Hence, it is strange that now it is contended that both were actually the same person.

However, be that so, a perusal of the judgments of the Courts below shows that the witnesses for the plaintiffs also, in their cross-examination, had admitted that they only came to know of the alleged encroachment by the defendants No.1 to 4 on the suit property, by way of the demarcation report, Ex.P3. The said report is admittedly dated 04.07.2006. The suit was thereafter filed on 05.08.2006. Obviously, the defendants having been in possession of the suit property for all the years before that, and having constructed their house upon it, it was too late in the day for the plaintiffs to have instituted a suit for possession of the property, the original plaintiff, Jai Singh, not having woken up to his right, till then, despite a sale deed, as now contended, having been existent in his and his brothers' favour, since 1974.

Thus, even if the application seeking to lead yet more additional evidence, is allowed, the appellants-plaintiffs having already earlier availed of an opportunity to do so before the learned lower Appellate Court, and even if it were to be presumed that on the basis of the said documents (if proved), the appellants were to be held to be the true owners of the said property, however, the plaintiffs having admitted the possession of defendants No.1 to 4 on the suit property, to their knowledge, for more than 12 years prior to 2006, the appeal would still have to be dismissed, holding the respondents-defendants No.1 to 4 to have come into the ownership thereof, by virtue of adverse possession for more than 12 years.

This is presuming, firstly, that by way of the second application for additional evidence, the appellants were to be able to prove the genuineness of the documents that they now seek to lead in additional evidence.

17. Hence, both, for the reason that the documents having been easily available with the appellants/their father (plaintiff Jai Singh), at the time of filing of the suit, as well as through out the pendency of the suit and the first appeal, the documents being public documents, and they not still having been brought on record by way evidence, as also because of the fact that even if the documents were to be proved, the suit still cannot be decreed in favour of the appellants-plaintiffs, the application is to be dismissed.

18. The two questions of law that the appellants have framed in the grounds of appeal, are as to whether a bonafide owner of a property can be

denied his possessory rights against encroachers, on account of an error committed by the revenue officials, and whether an illiterate, 'bonafide land owner', in whose name a mutation stands sanctioned, can be denied ownership rights on account of wrong entries made by the revenue officials.

As a matter of fact, both the aforesaid questions of law are one and the same question, put in a different manner.

In view of what has been held above, to the effect that, firstly, the ownership of plaintiff Jai Singh did not stand fully established in view of the appellants not having been able to show that actually it was Jai Singhs' name that was wrongly reflected in the revenue record as Tej Singh, and secondly, even if that were to be shown, yet an owner who remained silent, even due to ignorance, with regard to the possession of his property by some other persons, which was otherwise open and since the owner had not handed over the said property to the possessor, therefore hostile, then such owner loses title to the property, to the possessor, by way of adverse possession of such possessor, for a period of more than 12 years.

19. Consequently, for the aforesaid reasons, CM No.2066 of 2014, as well as the main appeal, i.e. RSA No.903 of 2014, are dismissed, but with no order as to costs.

24.05.2016
pk

(AMOL RATTAN SINGH)
JUDGE