

RSA No. 27 of 2012 (O&M)

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

RSA No. 27 of 2012 (O&M)

Date of Decision: 3.10.2017

Parkash Kaur and others

.....Appellants

Vs.

Joginder Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Raj Paul Kansal, Advocate
for the appellants.

Mr. Mahavir Sandhu, Advocate
for respondents No.1, 3 and 4.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for permanent injunction, filed by the plaintiffs-respondents, was decreed by the learned trial Court vide its impugned judgment and decree dated 15.6.2010 and first appeal of the defendants was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 8.2.2011, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by learned trial court in para 1 of its impugned judgment, are that plaintiffs were in peaceful possession of the land, as mentioned in head note of the amended plaint, for the last more than 30 years continuously and possession of the plaintiffs was open, hostile and continuous over the suit. Initially, the suit land was banjar and was

RSA No. 27 of 2012 (O&M)

made cultivable by the plaintiffs and became most fertile in the area and possession of the plaintiff was since 1964 continuous over the suit land supported by documentary evidence, as fully recorded in the revenue record i.e. jamabandi and khasra girdawari.

Further stated that court of Civil Judge (Junior Division), Ludhiana, vide judgment and decree dated 16.3.2000 decreed the civil suit titled as Dhanna Singh Vs. State of Punjab and others, in favour of the plaintiff restraining the officials of Department of Rehabilitation and Forest Department from interfering in the possession of the plaintiffs over the suit land comprised in khasra No. 2/21, 22, 23, 24, 25, 3//11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 4//8, 11, 12, 13, 14, 15, 16, 17 18, 19, 20, 10//1/1, 2/1, 3/1, 4/1, 5/1, 6/1, 7/1, 8/1, 9/1, 10/2, situated in village Mattewara, Tehsil and District Ludhiana and also restrained them from dispossessing plaintiffs from the suit land. Further stated that defendants were not having any right, title or interest in the suit land and the defendants threatened to dispossess the plaintiffs illegally and forcible from the suit land.

Having been put to notice, defendants appeared and filed their contesting written statement raising more than one preliminary objections. Replication was filed by the plaintiffs. On completion of pleadings of the parties, learned trial Court framed the following issues: -

- 1) Whether the plaintiffs are in possession of suit property?OPP
- 2) Whether the plaintiffs are entitled to relief of injunction?OPP
- 3) Whether the suit of the plaintiffs is maintainable, as the plaintiffs are not in possession over the suit property?

RSA No. 27 of 2012 (O&M)

OPD

4) Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have duly proved their case by bringing on record cogent and convincing evidence. Accordingly, their suit for permanent injunction was decreed by the learned trial Court vide its judgment and decree dated 15.6.2010. Defendants felt aggrieved and filed their first appeal, which also came to be dismissed by the learned District Judge, vide his impugned judgment and decree dated 8.2.2011. Hence this regular second appeal at the hands of unsuccessful defendants.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that there was more than sufficient documentary as well as oral evidence brought on record by the plaintiffs, so as to establish their exclusive and peaceful possession over the suit property. They were recorded in possession in the column of cultivation in the jamabandi for the year 1985-86. Similarly, they were recorded in the column of possession in the jamabandi for the year 1995-96 (Ex.P-2). They were also recorded in possession in the khasra girdawari (Ex.P3).

Presumption of truth is attached to the revenue entries, as per the statutory presumption provided under Section 44 of the Punjab Land

RSA No. 27 of 2012 (O&M)

Revenue Act. Defendants-appellants miserably failed to rebut said statutory presumption, which was clearly in favour of the plaintiffs-respondents. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

While recording their concurrent findings of facts, learned courts below also recorded that plaintiffs filed civil suit bearing No. 99 of 22.4.1995 against State of Punjab and others regarding this very suit land. Said suit was decreed vide judgment and decree Ex. P4 and Ex. P5, respectively. Plaintiffs were held to be in possession vide judgment and decree Ex.P4 and Ex. P5. Against the abovesaid judgment and decree (Ex.P4 and Ex. P5), defendants therein filed their first appeal which also came to be dismissed vide judgment and decree Ex.P6 and Ex. P7, respectively. Another suit was filed by the respondents herein, in respect of entire suit land and said suit was also decreed vide judgment and decree Ex.P8 and Ex. P9 respectively. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 14 to 21 of its impugned judgment, which deserve to be noticed here, read as under:-

“Main contention of learned counsel for the appellants

is that vide agreements copies Ex.D1 and Ex.D2, possession of suit land mentioned, therein, was delivered to the latter and therefore, respondents should be precluded from claiming themselves to be in possession of entire suit land.

It was required of the appellants to take agreements of sale in respect of part of suit land, copies Ex.D1 and Ex.D2 to logical conclusion by laying suit for specific performance so that polemic regarding genuineness and correctness, thereof, as also delivery of possession of suit land, mentioned, therein, could be set at rest. At this stage, recital mentioned in agreements of sale copies Ex.D1 and Ex.D2 can not be accepted to be veritable and possibility can not be ruled out that recital regarding delivery of possession of suit land mentioned, therein, was made in perfunctory manner and actually of recital of delivery of possession could be revealed only through entry, thereof, in revenue record showing appellants to be in cultivating possession, thereon.

In other words, agreements of sale copies Ex.D1 and Ex.D2 can not be said to be a sufficient rebuttal to the jamabandi Ex.P1 for the year 1985-86, wherein, respondents have been described as occupiers of the suit land.

Similarly recitals in agreement of sales ibid propounded by the appellants could not be a sufficient rebuttal to the jamabandi for the year 1995-96 Ex.P2, wherein, too, respondents have been recorded as occupiers of the suit land. In Khasra girdawari Ex.P3 also respondents have been described as occupiers of the suit land.

Dhanna Singh one of the respondents during his life time laid civil suit No.99 of 22.4.1995 against State of Punjab and others regarding suit land and that suit was decreed vide judgment and decree copies Ex.P4 and Ex.P5 respectively, holding him in possession of suit land. Even appeal against judgment and decree ibid was dismissed vide judgment and decree copies Ex.P6 and Ex.P7 respectively. Even another suit

RSA No. 27 of 2012 (O&M)

was filed by respondents and others in respect of entire suit land and that suit, too, was decreed vide judgment and decree, copies Ex.P8 and Ex.P9 respectively. Even DW2 Amrik Singh during cross examination admitted that at present crop of wheat is sown by respondents, herein, and same is standing in the suit land. So, this testimony of DW2 falsify the recital in the copies of jamabandis of sale Ex.D1 and Ex.D2 regarding delivery of possession of suit land mentioned, therein, to the appellants.

So, jamabandi carries presumption of truth and khasra girdawari, having been prepared by public servant in discharge of official duty, must be held to have evidentiary value, thereof.

So, on the basis of jamabandi, khasra girdawari and copies of judgments, there is no escape from conclusion that respondents are in possession of suit land and their possession, thereon, was required to be protected at the hands of the trial court as appellants made an abortive attempt to usurp the same.”

Again, while appearing as his own witness, defendant No.2- Amrik Singh (DW2), admitted in his cross-examination that crop of wheat standing in the land in question was sown by the plaintiffs-respondents. Once defendant No.2 himself admitted possession of the plaintiffs-respondents, nothing more was required to prove their case. It is so said because admission would be the best evidence. Further, defendants-appellants failed to prove any delivery of possession to them pursuant to agreements of sell (Ex.D1 and Ex. D2). In this view of the matter, no fault can be found with the impugned judgments and decrees and the same deserve to be upheld.

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not

RSA No. 27 of 2012 (O&M)

refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

3.10.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No