

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.305 of 2013
Date of decision:16.1.2017**

Satya Sarup @ Het Ram and others

...Appellants

Versus

Jagdish Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Rahul Vats, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Plaintiffs are in the second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration with consequential relief of permanent injunction was dismissed.

Brief facts of the case, as noticed by the learned trial Court in paras 1 and 2 of the impugned judgment, are that the plaintiffs filed the suit, claiming themselves to be in actual possession of the agricultural land measuring 15 Kanals 7 Marlas comprising in Khewat No.360(min)/305, Khatoni No.420/367, as detailed in para No.1 of the plaint (hereinafter called the suit property). Previously Bholi @ Bhajan Lal, the grandfather of the plaintiffs was in cultivating possession over the suit property as Gair Morusi/tenant under the defendants, who expired on 26.08.1971. The father of the plaintiffs, named Tek Chand expired on 16.6.1963 and after that it is the plaintiffs who are cultivating the suit property. The plaintiffs are in possession over the suit property continuously, uninterruptedly and peacefully. The plaintiffs neither surrendered or relinquished their

possession over the suit property nor any order of ejectment has been passed against the plaintiffs till the filing of the suit. After the death of Sh. Bhajan Lal, the plaintiffs met Halqa Patwari regarding charge of revenue entries in the revenue record, but the Halqa Patwari did not change the revenue record in the column of cultivation. On 28.2.2001, the Halqa Patwari has got recorded a Daily Diary Report No.327 dated 28.2.2001 in the absence of the plaintiffs in pursuance of the order dated 5.10.1995 passed by Assistant Collector II Grade, Palwal. In the garb of aforesaid order dated 5.10.1995, Daily Diary Report No.327 dated 28.2.2001 has been changed in the name of the defendants in collusion of the revenue authorities deleting the name of Bholi @ Bhajan Lal showing him in cultivating possession over the suit property. The impugned order dated 5.10.1995, Daily Diary Report No.327 dated 28.2.2001, revenue record from March, 2001 onwards are illegal, null and void and are liable to be set-aside on following grounds:-

- i. That the Assistant Collector II Grade, Palwal did not comply with the provisions of Punjab Land Revenue Act and the impugned order dated 5.10.1995 is liable to be set-aside.
- ii. That in the application titled 'Jagdish Chand Versus Bholi', Bholi @ Bhjan Lal had already expired, so, an application against a dead person is illegal, null and void and is liable to be set-aside.
- iii, That the defendants filed an application for correction of Khasra Girdawari against a dead person without impleading the plaintiffs being the legal representatives of Bholi though they were in actual physical possession over the same and the order dated 5.10.1995 is liable to be set-aside.

iv. That the munadi/publication in News Paper 'Dainik Mewat' was published on 6.6.1996 for appearance of the deceased Bholi @ Bhajan Lal; whereas the respondent Bholi was already ordered to be proceeded against exparte on 16.6.1994.

v. That the Assistant Collector II Grade, Palwal did not visit the spot and orders regarding spot inspection dated 17.8.1994 and 20.9.1995 have been manipulated at the instance of the defendants.

vi. That the proceedings in case of correction of Khasra Girdawari are illegal, null and void, manipulated and are not binding on the rights of the plaintiffs. The order correcting the Khasra Girdawari had been issued without impleading plaintiff as the party to the proceeding despite the fact that the plaintiffs were proper and necessary party to be impleaded in application for change in the Khasra Girdawari.

Now, the defendants in the garb of wrong revenue entries in the revenue records based on illegal order dated 5.10.1995, Daily diary report No.327 dated 28.2.2001 in their favour are threatening to interfere in the peaceful possession of the plaintiffs over the suit property. Despite repeated requests when the defendants did not resist from their illegal act, the plaintiffs are constrained to file the suit seeking a decree for declaration that the plaintiffs are the Gair Morusi tenants over the agricultural land and the impugned order dated 5.10.1995 passed by Assistant Collector II Grade, Palwal, Daily Diary Report No.327 dated 28.2.2001 and Khasra Girdawaris entries dated 13.3.2001 are illegal, null and void and are not binding on the

rights of the plaintiffs. As a consequential relief the plaintiffs have sought a decree for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff over the suit property.

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

1. Whether the plaintiffs are entitled to the declaration sought?OPP.
2. Whether the plaintiffs are entitled to the permanent injunction sought?OPP
3. Whether the plaintiffs' suit is not maintainable?OPD
4. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence, before the learned trial Court. After hearing the learned counsel for the parties and going through the relevant record, the learned trial Court came to the conclusion that the plaintiffs failed to prove their case, by leading cogent evidence. Accordingly, their suit was dismissed vide impugned judgment and decree dated 29.10.2010.

Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 28.07.2012. Hence this second appeal, at the hands of the plaintiffs.

Heard learned counsel for the appellants.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below, would make it crystal clear that the plaintiffs-appellants failed to prove their case. It is the settled

proposition of law that pleadings alone would not be sufficient to prove the case of any of the litigating party. It is also not in dispute that the appellants being the plaintiffs, onus was on them to prove their case by leading cogent evidence. However, they failed to do so by discharging their onus. Having said that, this Court feels no hesitation to conclude that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

The learned first appellate court, while reconsidering the entire case on facts as well as in law, recorded its cogent findings, before arriving at a just conclusion. The relevant findings recorded by the learned Additional District Judge, Palwal in para 18 of the impugned judgment, read as under:-

“Plaintiff No.1 Sh. Satya Sarup appeared as PW1 and tendered his affidavit Ex.PW1/A in his evidence. He has deposed that he and other plaintiffs are in actual cultivating possession of the suit land. He has also deposed that previously Bholi alias Bhajan Lal alias Bhajni son of Bhura, who was his grandfather, was in cultivating possession of the suit land as tenant under the defendants. He has deposed that his father Tek Chand died on 16.6.1963 and his grandfather died on 26.7.1971 and after his death they are in cultivating possession of the suit land. The plaintiffs have also placed on record the copy of death certificate of their father Tek Chand Ex. P26 in which Tek chand is shown to be son of Bhajni Lal. In this death certificate Tek Chand is show to be resident of Mohalla Kanungo, Palwal, caste Hindu Brahmin. The plaintiffs have also placed on record the copy of death certificate of Bhajan Lal Ex.P27 in which the father's name of Bhajan Lal is recorded as Bhura Mal and his address is shown to be Mohalla Kanungo, caste Hindu Brahmin. Therefore, it is proved that one Bhajan Lal @ Bhajni son of Bhura was

residing in Mohalla Kanungo, Palwal. The plaintiffs have also placed on record the copy of Khatoni Pamaish Ex.P28A which was prepared at the time of consolidation. This document shows that the previous Khasra numbers of the suit land were 6362, 6363,6364, 6375, 6342, 6344, 6349, 6339, 6341, 6443, 6336 and 6340. This document further shows that Bholi son of Bhura was in possession of the suit land as a tenant. The Jamabandi Ex.P8 for the year 1974-75 also shows that at the time of consolidation suit land was in possession Bholi son of Bhura. According to death certificate Ex.P26 and P27 name of grandfather of the plaintiffs was Bhajni Lal/Bhajan Lal. In these documents the name of grandfathers was the plaintiff is not recorded as Bholi alias Bhajan Lal alias Bhajni son of Bhura. Therefore it is not proved that Bholi son of Bhura recorded in possession of the suit land in the Jamabandi Ex.P7 and Khatoni Pamaish Ex.P28/P28A was grandfather of plaintiffs. Moreover, Jamabandi Ex.P14 shows that Bhajni son of Bhura was in possession of and bearing Khasra No.6380. The name of grandfather of the plaintiffs is also recorded as Bhajni Lal in death certificate Ex.P26. Therefore, it might be possible that Sh. Bhajni, grandfather of the plaintiffs, was in possession of Khasra No.6380. Copy of Khatoni Pamaish Ex.P29/P29A shows that suit land was not allotted in lieu of Khasra No.6380. This document shows that Khasra No.297/23/3 was allotted in lieu of Khasra No.6380. Since suit land was not allotted in lieu of land which was in possession of Bhajni son of Bhura, the plaintiffs have no right to claim possession over the suit land. The plaintiffs have not examined any witness from the locality to prove that Bholi son of Bhura was also known as Bhajni. The plaintiffs have not produced any evidence in the shape of water cess of J-form etc. For showing that they had been cultivating suit land. If the plaintiffs had been in cultivating possession of the suit land they would have sold the crop in the grain market and they could prove the same by producing J-form or examining the

commission agent of the grain market with whom they sold their crop. The plaintiff have not examined any independent witness to show their possession over the suit land. They have also not produced any rent receipt regarding payment of rent. Since the plaintiffs have failed to prove that they are descendants of Bholi son of Bhura and they are in possession of the suit land, the leaned Trial court has rightly held that the plaintiffs have no locus standi to file the present suit and their suit is not maintainable.

During the course of hearing, when confronted as to which finding recorded by learned courts below was patently illegal, raising substantial question of law for consideration of this Court, learned counsel for the appellants had no answer and rightly so, it being a matter of record. In such a situation, this Court would exceed its jurisdiction under Section 100 of the Code of Civil Procedure to interfere in such a matter where no substantial question of law arises for consideration.

It also goes without saying that raising substantial question of law at the hands of the appellants is *sine qua non* for interference at the hands of this Court, while exercising its appellate jurisdiction. The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286.***

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 bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Consequently, both the impugned judgments and decrees passed by the

learned courts below are upheld.

Resultantly, with the above-said observations made, the instant
second appeal stands dismissed, however, with no order as to costs.

16.1.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No