

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

RSA No.1381 of 2016(O&M)

Date of Decision:1.9.2017

Nasib Singh

...Appellant

Versus

Budh Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Gourav Jain, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendant is in the regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby the suit for permanent injunction filed by the plaintiff was decreed by the learned trial court, vide its impugned judgment and decree dated 17.11.2014 and first appeal of the defendant was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 8.12.2015, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that the plaintiff Budh Ram had filed a suit for permanent junction, restraining the appellant/defendant from creating any interference into his possession over the land measuring 8 kanals comprised by killa No. 26//20, khewat and khata No. 56/180 as per jamabandi for the year 2009-2010 situated in village Padarth Khera, Tehsil Narwana as the suit land was his *shamlat deh hasab hisse jaddi mundrja shajra nasab*. The land measuring 48 kanals 14 marlas was owned by *shamlat deh hasab hisse jaddi mundrja shajra nasab* and the plaintiff was

co-sharer and in exclusive possession of the suit land since the time of his forefathers. It was submitted that in the jamabandi the name of the plaintiff had been reflected as *gair-marusi*. It was further alleged that the defendant had no concern whatsoever with the suit land but he was interfering into possession of the plaintiff and he wanted to damage the crop of the plaintiff and if the defendant was succeeded in doing so then the plaintiff would suffer irreparable loss. However, the defendant was requested not to create any interference into the peaceful possession of the plaintiff over the suit land but he did not accede the request.

Having been put to notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication to the written statement. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP
2. Whether the plaintiff has got no locus standi to file the present suit? OPD
3. Whether the present suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has suppressed material facts from the court? OPD
5. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties led their oral as well as documentary evidence. Plaintiff brought on record voluminous documentary as well as oral evidence in support of his pleaded case, whereas defendant appeared as his

own witness as DW-1 and examined one Nahar Singh as DW-2 and thereafter closed his evidence, without tendering any document in support of his case. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that the plaintiff has duly proved his case, by leading cogent and convincing evidence. Accordingly, suit of the plaintiff for permanent injunction was decreed by the learned trial court, vide its impugned judgment and decree dated 17.11.2014. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 8.12.2015. Hence, this regular second appeal, at the hands of the unsuccessful defendant.

Heard learned counsel for the appellant.

The entire case of the appellant-defendant was based on an agreement to sell dated 18.6.1990 allegedly entered between the defendant and father of the plaintiff, but the defendant miserably failed to prove this document. Neither the defendant-appellant could prove this alleged agreement to sell dated 18.6.1990 nor any other document or oral evidence was brought on record by him in support of his pleaded case. On the other hand, plaintiff duly proved his case, by bringing on record the relevant documentary as well as oral evidence in the form of jamabandis Ex.P1 to Ex.P5 and khasra girdawari Ex.P6. In all these revenue documents, possession of the plaintiff was recorded. Thus, defendant-appellant was stranger to the land in question. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees

and the same deserve to be upheld.

As per Section 44 of the Punjab Land Revenue Act, 1887, presumption of truth would be attached to the revenue entries. Although such presumption would always be rebuttable, yet the appellant-defendant in the case in hand miserably failed to rebut the statutory presumption of truth in favour of the plaintiff. It is so said because the defendant-appellant did not lead any such evidence either documentary or oral. Once the plaintiff has duly established his possession over the suit land as per the revenue record, i.e. jamabandis and khasra girdawari, his suit for permanent injunction was bound to be decreed, particularly when there was no better and contrary evidence brought on record by the defendant-appellant. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the 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.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court in **Ramji Rai and another Vs. Jagdish Mallah (Dead) through LRs and another, 2007 (14) SCC 200, Ramesh Vajabhai Rabari Vs. Pratiksha Real Estate Pvt.Ltd. and others etc., 2014(12) SCC 190** and judgments of this Court in **Bhupinder singh and others Vs. Roop Singh and another, 2010(8) RCR (Civil) 788** and **Akhtar and others Vs. Israil and another, 2012(55) RCR (Civil) 547**

So far as the application of the appellant under Order 41 Rule 27 of the Code of Civil Procedure bearing CM-3878-C-2016 through which

the applicant-appellant seeks to place on record agreement to sell dated 18.6.1990 as Annexure A-1, is concerned, it is hardly of any consequence at this belated stage. It is so said because the appellant was well aware that his entire case was based on this alleged agreement to sell, however, he did not bring on record this agreement, while leading his defence evidence before the learned trial court and that too for no good reasons.

Similarly, the defendant-appellant did not move any such application under Order 41 Rule 27 CPC along with his first appeal before the learned first appellate court, for the reasons best known to him. No plausible explanation is forthcoming as to why the appellant could not bring on record this document while leading his evidence. The excuse pointed out by the appellant in paras 2 and 3 of his application has been duly considered by this Court but the same has been found wholly misconceived, based on an after thought and has not been found worth acceptance. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 13 and 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“After having given a thoughtful consideration over the rival submissions of both the sides, it is considered view of this court that the plaintiff has claimed himself to be owner in possession of the suit land i.e. rect. No.26 killa No.20(8-0) as per

jamabandi for the year 2009-2010 but on perusal of jamabandi Ex.P5 it has revealed that however, the name of the plaintiff has been mentioned in the column of cultivator as gair marusiyan to the extent of 406/487 share out of total land measuring 48 kanals 14 marlas but in the column of ownership, shamlat deh hasab hisse jaddi mundrja shajra nasab wasi deh has been recorded as owner. The plaintiff has also placed on record file the copy of jamabandi for the year 1989-90 which is Ex.P1 on record file and in this jamabandi the owner is the same and the name of plaintiff's father has been mentioned in the column of cultivator as gair marusiyan. Similarly, in jamabandi for the year 1994-95 also which is Ex.P2 the same entries have been recorded. Again in the jamabandi for the year 1999-2000, Ex.P3, it has been mentioned that father of the plaintiff namely Ganesha was the cultivator in the suit land to the extent of 812 share and thereafter, similar entries have been mentioned in the jamabandi for the year 2004-2005, Ex.P4. When the plaintiff appeared in the witness box as PW1 then in his affidavit Ex.PW1/A he has categorically deposed that he is in possession of the suit land as gair marusiyan, however, in his cross examination the plaintiff claimed himself to be owner of the suit land but no specific evidence in this regard has been adduced, rather, the revenue record reflects that the plaintiff is not the direct owner of the suit land, but shamlat deh hasab hisse jaddi mundrja shajra nasab is the owner. The defendant in his cross examination has admitted this fact that in the village Padarth Khera a person who is in possession of shamlat deh has to be deemed as owner of that land and this admission goes to show that the plaintiff has a preferential right over the suit land as a gair marusi. Khasra girdawari entry Ex.P6 does not indicate that the plaintiff is in exclusive possession of khasra No.20, but these revenue records are sufficient to show that neither the name of the defendant nor his father has not been mentioned any where in any capacity.

On the other hand, the defendant has taken a specific stand that father of the plaintiff namely Ganesha had handed over the possession of 8 kanals land to the father of the defendant and that land was bounded as under i.e. towards east gami, towards west Palu, towards north Mewa and Gurdev and towards south the land of defendant's father and this land had been transferred by virtue of an agreement dated 18.6.1990 against sale consideration of Rs.22,000/- in total, but the defendant has been completely failed to prove this document. Although, it was pleaded that this document had been executed in the present of Hakam Singh and Gurmail Singh but neither the original agreement has been placed on record file nor any attesting witness named above had been produced before the court for proving the authenticity of alleged agreement dated 18.06.1990. Apart from this, no revenue document is in favour of the defendant and when it was the stand of the defendant that he has already moved an application before the revenue authorities for getting correction of khasra girdawari entry in his favour then in that eventuality he could have produced at least those documents, but of no avail. Thus, the defendant has been failed to prove his stand whereas the plaintiff has been successful to prove his case that he was in possession of the suit land as gair-marusian and the defendant had no concern whatsoever with the suit land and when there was a threat from the side of the defendant for committing dispossession of the plaintiff then the plaintiff had a good cause of action and prima facie case in his favour.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question

of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus 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 instant 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 present regular second appeal stands dismissed, however, with no order as to costs.

1.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

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