

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1684 of 2016 (O&M)
Date of decision: 25.07.2017

Bur Singh

... Appellant

Vs.

Mukhtiar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant is 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 plaintiff-respondent was decreed by the learned trial Court and first appeal filed by the defendant was also dismissed by the learned first appellate Court, upholding the judgment of learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that plaintiff was owner in possession of the suit land measuring 2 kanals, as entered in the jamabandi for the year 2008-09, as fully detailed and described in the head note of the plaint, situated in village Bhaini Khakkar, Had Bast No.542, Tehsil and District Gurdaspur. Original owner of the suit land was Central Government and he was in

cultivating possession. Thereafter, he purchased the suit from the Central Government vide conveyance deed dated 09.06.2010 for a consideration of Rs.3750/- and mutation No.909 was sanctioned in his favour. It was further pleaded that defendant Bur Singh, who was head strong person, was threatening to dispossess him forcibly and illegally from the suit land, without having any right, title or interest.

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

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiff has got no locus standi to file the present suit? OPD
4. Whether the present suit is barred by Provision of Res judicata? OPD
5. Whether the plaintiff has not come to the Court with clean hands? If so its effect? OPD
6. Whether the plaintiff has suppressed the material facts from the Court? OPD
7. Relief

In support of 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 plaintiff has duly proved his case. Accordingly, suit of the plaintiff for permanent injunction restraining the defendant from interfering in any manner and dispossessing the plaintiff forcibly and illegally from the land measuring 02 kanals, as per the details given in the head note of the plaint, was decreed by the learned trial Court, vide impugned judgment and decree dated 26.08.2014. Defendant filed his first appeal, which was dismissed by the learned first appellate Court vide its impugned judgment and decree dated 07.11.2015. Hence this regular second appeal at the hands of defendant.

Heard learned counsel for the appellant.

Specifically pleaded and proved case of the plaintiff-respondent was that he purchased the suit land from Central Government vide conveyance deed dated 09.06.2010 Ex.P1. His possession came to be recorded in the khasra girdawari Ex.P3. Sudarshan Kumar, Patwari PW3 duly proved that as per the relevant revenue record, plaintiff was owner in possession of the suit property. His name was recorded in column of possession i.e. column No.4, over specific khasra No.23//7/1 (2-0) in the jamabandi for the year 2008-09 Ex.P2. Name of the plaintiff was also recorded in cultivating possession in the khasra girdwari Ex.P3. 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.

Entire case of the defendant-appellant was based on exchange deed allegedly executed between Anchal Singh and the defendant. He claimed to have purchased the land from the Central Government vide conveyance deed

dated 18.12.1986 Ex.D3. He further stated that the defendant exchanged the land purchased by him with Anchal Singh. However, when learned counsel for the appellant was asked to refer to any exchange deed, he could only say this much that it was an oral exchange. Then he further tried to qualify this fact saying that there was an agreement of exchange. When learned counsel for the appellant was asked to refer to the relevant mutation, wherein the oral exchange might have been recognized between the appellant and Anchal Singh, he had again no answer and rightly so, it being a matter of record. Oral exchange or an exchange by way of an agreement, unless it is so recorded in the relevant revenue record i.e. mutations and jamabandis, such an exchange would be of no consequence. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

It is the settled proposition of law that under Section 44 of the Punjab Land Revenue Act, 1987, presumption of truth is attached to the revenue entries. This presumption of truth was in favour of the plaintiff in the case in hand. It is also a matter of record that presumption of truth would always be rebuttable. However, in the instant case, defendant-appellant miserably failed to rebut the presumption by leading any contrary evidence. In such a situation, plaintiff would be entitled for the benefit of Section 109 of the Indian Evidence Act, unless the presumption would have been rebutted by the defendant-appellant. Since the learned Courts below considered each and every relevant aspect of the matter before passing their respective impugned judgments and

decrees, the same deserve to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Harish Chander and others Vs. Ghisa Ram and another, 1981 (1) SCC 431.***
2. ***Ram Avadh and others Vs. Ram Dass and others, 2008 (8) SCC 58.***
3. ***Khiali Ram and another Vs. Sant Lal, 1972 PLJ 118 (P&H).***
4. ***Jai Narain and others Vs. Boda Ram alias Bod Raj, 2007 (2) RCR (Civil) 711 (P&H).***
5. ***Gunit Sidhu and another Vs. Bhai Shaminder Singh (since deceased), 2009 (3) RCR (Civil) 648 (P&H)***
6. ***Avtar Singh Vs. Kuldeep Singh, 2015 (7) RCR (Civil) 790 (P&H).***
7. ***Gulzara Singh (deceased) through LRs Vs. Brij Raj and others, 2016 (1) PLR 198 (P&H).***
8. ***RSA No.5578 of 2015 (Gurbachan Singh and others Vs. Sarban Singh @ Surat Singh and others), decided on 07.03.2017 (P&H).***
9. ***RSA No.6669 of 2016 (Gram Panchayat through its Sarpanch Vs. BD&PO Ganaur and others), decided on 09.05.2017 (P&H).***

Before arriving at its just conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in paras 12 to 14 of the impugned judgment, which deserve to be noticed here, read as under: -

“I have gone through the file very carefully. Before the learned lower Court, Mukhtiar Singh, plaintiff/respondent has filed a suit against Bur Singh, appellant/defendant for permanent injunction restraining Bur Singh from interfering in any manner and dispossessing the plaintiff forcibly, from the land measuring 2 kanals comprised in Khewat No.183, Khatauni No.303, Rect. 23, Killa No.7/1 (2-0). The plaintiff/respondent has filed a suit for specific khasra number i.e. 23//7/1/ (2-0) before the ld. trial Court. The plaintiff Mukhtiar Singh himself stepped into witness box as PW1 and tendered original conveyance deed dated 09.06.2010 Ex.P1, copy of original jamabandi Ex.P2 and khasra girdawari Ex.P3 and further examined PW2 Raj Singh, Member Panchayat, to prove his possession and Sudarshan Kumar Patwari, as PW3, who has brought the summoned record and specifically stated that as per revenue record, Mukhtiar Singh s/o Jaimal Singh of village Bhaini Khaddar is owner of disputed property. The plaintiff/respondent in his case admitted that he is owner in possession of 23//7/1 (2-0), as he purchased it from the Central Government, through conveyance deed dated 9.6.2010 for consideration of Rs.3750/-. On the other hand, the appellant/defendant took defence that he is in cultivating possession of the land measuring 8 kanals 0 marlas comprised in Rect. No.23, Killa No.6 (3-0), 7 Min Charda (5-0) vide Ex.D1, Khasra Girdawar Ex.D2 and this land was owned by Arazi

Matrooka (Central Government) and sold to Bur Singh through conveyance deed dated 18.12.1986 Ex.D2 and copy of sale deed dated Ex.D3 vide which earlier also, the plaintiff/respondent has taken illegal possession and the present appellant/defendant filed a suit for possession that decided in his favour dated 24.5.1990, vide judgment and decree Ex.D5 and Ex.D6 respectively and vide Roznamcha Vaikati bearing rapat No.198 dated 17.5.1991 Ex.D7 and now defendant is in physical cultivating possession and also further examined Manjit Singh DW2 s/o Kartar Singh and Sudarshan Kumar DW3, who also come into witness box being an official witness. Ld. counsel for the plaintiff/respondent has strongly argued that in fact they have filed a suit of specific khasra No.23//7/1 (2-0) and appellant/defendant is in possession of Rect. No.23 Killa No.7 min-charda (5-0). So these two lands are different lands. The ld. counsel further stated that they have nothing with the property/land of Rect. No.23 Killa No.7 min-charda (5-0).

It is well settled law that men tell lies but documents do not. To ascertain that who is in possession and owner of the property being khasra number, the revenue record is the best type of evidence as revenue officials have prepared these records in their official capacity and having nothing ill-will against anyone that is why presumption of truth is attached to jamabandies and khasra girdawaries, under Section 44 of Punjab Land Revenue Act,

although such presumptions are rebuttable. Before the ld trial Court Mukhtiar Singh is seeking an injunction of specific khasra number 23//7/1 (2-0) as per documentary evidence, which has been placed on file by the plaintiff/respondent. It is a simple suit for injunction and no declaration has been sought by the plaintiff/respondent before the ld. trial Court. Plaintiff/respondent has placed on record Ex.P1 that is conveyance deed in favour of plaintiff/respondent of specific khasra No.23//7/1 (2-0) and that conveyance deed is a legal document placed on the file. I have also gone through Ex.P2 i.e. jamabandi for the year 2008-09, plaintiff/respondent Mukhtiar Singh is shown in the column of cultivating possession i.e. Column No.4 of specific khasra No.23//7/1 (2-0). Similarly, Ex.P3 i.e. khasra girdawari and in khasra girdawari also Shri Mukhtiar Singh has been shown in cultivating possession. So from all the documents, it has been proved on the file that plaintiff/respondent is in cultivating possession of specific khasra No.23//7/1 (2-0). Similarly, in cross-examination of DW2 Manjit Singh also admitted this fact that Mukhtiar Singh is in possession of 2 kanals of land on the basis of conveyance deed.

I have also gone through the documents of applicant, the documents which have been placed on file by the appellant/defendant are i.e. Ex.D1 i.e. jamabandi for the year 1973-74, where Bur Singh has been shown in cultivating

possession of 23//7 Min Charda (5-0), which means that these are two separate numbers i.e. 23//7/1 (2-0), 23//1 Min Charda (5-0). Similarly, in Ex.D2 appellant/defendant Bur Singh is shown in cultivating possession of 5 kanals as Gair Dakhildar of 23, 7 Min Charda. Similarly, as per Ex.P3 i.e. conveyance deed in favour of appellant/defendant of specific khasra No.23, 7 Min Charda (5-0) and not of 23//7/1 (2-0). As per Ex.D4, Bur Singh has also filed a suit for possession against Mukhtiar Singh of two kanals i.e. out of Killa No.7 Min Charda (5-0) and not filed any suit of possession of khasra No.23//7/1 (2-0). Similarly as per Ex.P7, the possession of 2 kanals of land, which has been delivered to appellant/defendant on the basis of decree i.e. from 23/1, 7 Min Charda. So, the ld. trial Court has rightly held in his judgment in para no.18 i.e. it leave no doubt in mind that plaintiff has proved his possession over the suit land and accordingly, issue No.1 is decided in favour of the plaintiff and against the defendant. Ld. trial Court has rightly held that present suit is regarding land comprised in Killa No.7/1 of Rect. No.23 only. As such, the subject matter of earlier suit is not the same and suit is not hit by the principal of res-judicata.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the concurrent findings recorded by both the learned Courts below. Further, no question of law, much less substantial question of law arises for consideration of this Court, which is sine qua non for entertaining the regular second appeal, while exercising the

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 **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground 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.

[RAMESHWAR SINGH MALIK]
JUDGE

25.07.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No