

RSA No. 1028 of 2015 (O&M)

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

**RSA No. 1028 of 2015 (O&M)
Date of Decision: 1.8.2017**

Kewal Singh and others

.....Appellants

Vs.

Kulwant Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate
for the appellants.

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.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiffs-Kulwant Singh son of Ujagar Singh and Nishan Singh son of Kulwant Singh, residents of village Gaggomahal, Tehsil Ajnala District Amritsar, had filed a suit for permanent injunction against defendants-Dalip Singh son of Bela Singh, Ram Singh son of Banta Singh, Gurmukh Singh son of Sardool Singh, Sulakhan Singh son of Darshan Singh, Balkar Singh son of Teja Singh and Kewal Singh son of Harbans Singh, all residents of village Gaggomahal,

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Tehsil Ajnala District Amritsar, restraining them from dispossessing the plaintiffs from the suit land measuring 12 Kanals 6 Marlas bearing khasra No. 22//7(2-7), 8(1-0), 281(2-2), 22//2/11(2-9), 3/2(2-9), 4/3(2-9) khewat khatauni No. 1321/2476, 2464, as per jamabandi for the year 2001-02, situated in village Gaggomahal, Tehsil Ajnala District Amritsar forcibly, illegally without following due course of law, on the averments that suit land was the ownership of Jumla Mushtarka Malkana Hasb Rasd Khewatwar. Swaran Singh, who was in cultivating possession of the suit land, sold the same to Vinod Kumar son of Jagdish Raj, resident of village Gaggomahal, who further sold it to plaintiffs vide sale deed dated 8.5.1991 and Gurmeet Singh, who was the co-sharer in the suit land sold the land measuring 7 Kanals 7 Marlas bearing khasra no. 22/2/11(2-0), 3/2(2-9), 4/3(2-9) khewat khatauni No. 1321/2464 to plaintiff Nishan Singh vide sale deed dated 14.6.1991. The names of plaintiffs were entered in the revenue record, which show that plaintiffs were in continuous possession over the suit land as owners. The defendants had no right, title or interest in the suit land but they were adamant to dispossess the plaintiffs from the suit land forcibly and illegally.

Having been put to notice, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Defendants also filed their counter-claim for declaration to the effect that suit property was kept as Gara Khad (manure pit), which was meant for the use of defendant/counter-claimants and other inhabitants of the village. Plaintiffs filed their replication. They also filed their written statement to the counter-claim of the defendants.

On completion of pleadings of the parties, the learned trial court

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framed the following issues:-

- 1) Whether plaintiffs are in possession of suit property?
OPP
- 2) Whether plaintiffs are entitled to permanent injunction
as prayed for ? OPP
- 3) Whether the counter claimants are entitled to
declaration as prayed for ?OPD
- 4) Whether the counter claimants are entitled to the relief
of permanent injunction ?OPD
- 5) Whether the sale deeds dated 4.6.1991 and 28.4.1995
are illegal, null and void?OPD
- 6) Whether the suit is not maintainable in the present
form ? OPD
- 7) Whether the plaintiffs have no cause of action and
locus standi to file the present suit ?OPD
- 8) Whether the plaintiffs have no locus standi to file the
present suit ?OPD
- 9) Whether plaintiffs are estopped by their own act and
conduct from filing the present suit ?OPD
- 10) Whether the plaintiffs have got no cause of action to
file the present suit ?OPD
- 11) Whether the plaintiffs have not come to the court
with clean hands ?OPD
- 12) Whether the counter claim of defendants is not
maintainable in the present form ?OPP
- 13) Whether the defendants have no locus standi to file
the counter claim ?OPP
- 14) Whether no cause of action arose to the defendants to
file the counter claim ?OPP
- 15) Whether the counter claimants are estopped by their
own act and conduct from filing the present counter
claim ?OPP
- 16) Whether counter claim is not properly valued for the
purpose of court fee and jurisdiction ?OPD

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17) Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs have duly proved their case, whereas defendants failed to prove their counter-claim. Accordingly, suit for permanent injunction filed by the plaintiffs was decreed whereas the counter-claim of defendants was dismissed by the learned trial court, vide its impugned judgment and decree dated 3.9.2012. Feeling aggrieved, defendants filed their first appeal which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 14.10.2014. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the appellants.

It is a matter of record that the land in question was recorded in the revenue record as Jumla Mushtarka Malkan Hasab Rasad Arazi Khewat. Swarn Singh, being proprietor of the village, was co-sharer in the Jumla Mushtarka Malkan. He sold his share to Vinod Kumar son of Jadgish Raj, who further sold it to the plaintiffs vide sale deed dated 8.5.1991. Thus, plaintiffs being bonafide purchasers, became co-sharers in the Jumla Mushtarka Malkan and were put in possession by their vendors.

Revenue entries were also in favour of the plaintiffs. Under Section 44 of the Punjab Land Revenue Act, presumption of truth is attached to the revenue entries. Although such a presumption would be rebuttable, yet defendants, in the present case, failed to lead any contrary evidence, with a view to rebut the presumption of truth in favour of the plaintiffs. Having

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said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Defendants-appellants were claiming themselves to be owners of the suit land. They also did not challenge the validity of the sale deed dated 8.5.1991. Since the appellants were not proprietors of the village, they had nothing to do with the suit land, which was Jumla Mushtarka Malkan Hasab Rasad Arazi Khewat. On the other hand, plaintiffs being proprietors of the village, were in settled possession over the suit land in their own right. In this view of the matter, defendants-appellants had no right to disturb the peaceful possession of the plaintiffs. Under these undisputed facts and circumstances of the case, it can be safely concluded 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, for this reason also.

The abovesaid view 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. Gunit Sidhu and another Vs. Bhai Shaminder Singh (since deceased), 2009(3) RCR (Civil) 648 (P&H)***
- 5. RSA No.5578 of 2015 (Gurbachan Singh and others Vs. Sarban Singh @ Surat Singh and others), decided on 7.3.2017 (P&H).***

6. RSA No. 6669 of 2016 (Gram Panchayat through its Sarpanch Vs BD&PO Ganaur and others)

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 11 and 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“The present suit has been filed by the plaintiffs, seeking permanent injunction restraining the defendants from dispossessing them from the suit land forcibly and illegally, except in due course of law, coming up with a plea that suit land was the ownership of Jumla Mushtarka Malkana Hasb Rasd Khewatwar. Swaran Singh, who was in cultivating possession of the suit land sold the same to Vinod Kumar son of Jagdish Raj, resident of village Gaggomahal , who further sold it to plaintiffs vide sale deed dated 8.5.1991 and Gurmeet Singh, who was the co-sharer in the suit land sold the land measuring 7 Kanals 7 Marlas bearing khasra no. 22/2/11(2-0), 3/2(2-9), 4/3(2-9) khewat khatauni No. 1321/2464 to plaintiff Nishan Singh vide sale deed dated 14.6.1991 and by virtue of such sale deeds, their names are entered in revenue record and as such, they are in possession of the suit land as owners. In order to prove their possession over the suit land, plaintiff Kulwant Singh stepped into witness box as PW1 and Nishan Singh stepped into witness box as PW3, deposing as per their case by tendering into evidence their respective affidavits as Ex.PW1/A and Ex.PW3/A. Sawinder Singh PW2 examined by the plaintiffs from their village also supports their version in his affidavit Ex.PW2/A. PW4 Malook Singh, Scribe of the sale deed dated 14.6.1991, deposed that he had scribed the sale deed Ex.P1/A at the instance of Gurmit Singh in favour of plaintiffs.

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PW5 Baljinder Singh, Deed Writer also deposed that he had scribed the sale deed dated 8.5.1991

Ex.PW2/B, at the instance of Vinod Kumar in favour of Kulwant Singh plaintiff.

Whereas, defendants have come up with a plea that during consolidation of holdings, which took place in the village, land measuring 4 acres was kept for owners for the purpose of gara khad(manure pit). Land measuring 12 Kanals was kept for non owners during the consolidation scheme bearing old khasra No. 1122, 1125, 1139, 366, 367,368, 1115, 1118, 1112, 1065, 1068, 1066, 1067, 1072 and during consolidation of holdings, these khasra Numbers were merged into new khasra No. 22/2/11, 3/2, 4/3, 7,8,9. All the defendants were non owners of the village and the suit property was kept for their common purpose. The houses of defendants are situated, adjoining the disputed property. The plaintiffs, in connivance with the revenue officials, illegally got their names inserted in the revenue record, whereas, the plaintiffs never came into possession of the disputed property. Even, in jamabandi for the year 1981-82, the suit property was mentioned as gara khad. In the jamabandi for the year 1986-87, khasra no. 22/4/2/2 was also as gara khad, but khasra no. 22/8 in the jamanadi for the year 1986-87, was wrongly mentioned as gair mumkin plot instead of gara khad. Similarly, in the jamabandi for the year 1991-92, khasra no. 22/8 was wrongly mentioned as gair mumkin plot, instead of gara khad, but, in the jamabandi for the year 1964-65, which, was first jamabandi, after the consolidation of holdings the nature of property was gara khad. One Gurmit Singh son of Nishan Singh had illegally executed the sale deed dated 14.6.1991 in favour of Nishan Singh in respect of property which was kept for gara khad. In respect of land i.e khasra no. 22/3/2(2-9), 4/3(2-9) and 2/11(2-9), Kulwant Singh had illegally sold the land measuring 4K 9 M bearing khasra no. 24/25 in favour of Karam Singh vide sale

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deed dated 28.4.1995. Though Dalip Singh one of the defendants while stepping into witness box has deposed as per his case as pleaded in the written statement, specifically stating that plaintiffs never came into possession over the suit land, but then in his cross examination, he has specifically admitted that Kulwant Singh had purchased the suit land. He further went on saying that it is correct that there was a fish pond made in part of the suit land, which is in possession of Kulwant Singh. Similarly, DW3 Kewal Singh has stated in his cross examination that Kulwant Singh had purchased the suit land from Vinod Kumar son of Jagdsh Raj. He further admitted it to be correct that Kulwant Singh and Nishan Singh are coming as owners of the suit land. Jamabandi placed on record as Ex.P1 also reflects the names of plaintiffs to be in cultivating possession and land in dispute, is shown to be ownership of Jumla Mushtarka Malkan Hasab Rasad Khewatwar. The defendants have failed to rebut this material piece of evidence, which is in the shape of revenue record. Though it was strenuously argued by the defendants that during consolidation of holdings, took place in the village, the suit property was kept for the purpose of gara khad, but again no revenue record has been placed or proved on record showing the suit property to be kept for gara khad purposes. Though the defendants have placed on record previous revenue record, but no latest revenue record showing the property to be kept for gara khad has been proved on record, rather latest entries of jamabandi Ex.P1 supports the case of plaintiffs. Even in cross examinations defendant Kewal Singh, failed to tell as to which khasra number gara khad falls. Thus, defendants have failed to prove their case that during consolidation of holdings, the suit land was kept for the purpose of gara khad, rather it is the own admission of DWs Dalip Singh and Kewal Singh that plaintiffs are in possession of the suit land, having been purchased by them. In such circumstances, when plaintiffs are admittedly in possession of

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the suit land and the case filed by the plaintiffs being suit for permanent injunction, they are certainly entitled to get their possession protected from defendants, by approaching the court. Though the plaintiffs had purchased the suit land vide sale deeds dated 8.5.1991 Ex.PW2/B and 14.6.1991 Ex.P1/A but admittedly, defendants neither challenged such sale deeds nor entries in their favour in revenue record, prior filing the instant suit by the plaintiffs, which was filed on 23.8.2007 and they have challenged the sale deeds by way of setting up counter claim in said suit, that too, beyond period of three years. A person not in possession of property can challenge within three years sale deed in favour of other person in possession of property. It being so, the counter claim filed by defendants, now challenging the sale deeds, in question, beyond a period of three years, is certainly barred by limitation. As such, I am of the view that the findings recorded by the lower court in that regard, are also correct and do not call for interference of this court.”

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 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

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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.

1.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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