

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1729 of 2015 (O&M)

Date of Decision: 5.12.2017.

Kiran Pal and others

.....Appellants

Versus

Jaipal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. V.D. Sharma, Advocate
for the appellants.

AVNEESH JHINGAN, J.

The present appeal has been filed at the behest of the plaintiffs being aggrieved of concurrent judgments and decrees passed by the learned Courts below dismissing their suit for possession and permanent injunction.

The parties for the sake of convenience are being referred to as per their status in the original suit.

The plaintiffs filed a suit for possession and permanent injunction with regard to the property detailed in the suit. The property is in Khewat No. 33, Khatauni No. 51, Khasra No. 169 (1-2) gair mumkin gait situated in village Gothra, District, Rewari.

The facts, as averred by the plaintiffs, are that the plaintiffs and the defendants were owners as co-sharers in the suit property. It was stated that no partition by metes and bounds had been affected among the parties. The detail of the suit property was mentioned in the suit. It was pleaded that the defendants raised the illegal construction about 5 years back over the land which formed part of Khasra No. 169. As the defendants

refused to accept the ownership of the plaintiffs and refused to remove the

illegal construction, hence, the suit was filed.

Upon notice defendants No. 1 and 2 appeared and filed joint written statement. Preliminary objections were raised regarding maintainability of suit being time-barred. On merit, it was stated that the property in dispute was owned and possessed by defendants No. 1 and 2 and they had raised construction over it. It was stated that 20 years back there was a family settlement, according to which orally and mutually the plaintiffs and the performa defendants exchanged the property in Khasra No. 169 with the property having Ahta No. 57, Ghar No. 103 to 105. The plaintiffs and the performa defendants became owner in possession of their property and defendant No. 1 and 2 became owners in possession of property in dispute i.e. Khasra No. 169.

Replication was filed by the plaintiffs controverting the averments as pleaded by defendants No. 1 and 2 in their written statement.

Learned trial Court framed the following issues:

- (1) Whether the plaintiffs are entitled to obtain a decree of possession?OPP
- (2) Whether the plaintiff is co-sharer of the suit property entitled to a decree of partition of share?OPP
- (3) Whether the plaintiffs are estopped by their act and conduct to file the present suit?OPD
- (4) Whether the plaintiffs have no cause of action to file the present suit? OPP
- (5) Whether the suit is time barred?OPD
- (6) Whether the suit is barred under Section 10 of CPC?OPD
- (7) Whether the suit is not maintainable?OPD
- (8) Relief.

In order to support the suit, the plaintiffs exhibited various

documents including Aks-sajra, Jamabandi for various years, mutation, report of building expert, photographs etc. The plaintiffs examined Mahabir, Rajpal, Om Parkash Yadav-Draftsman, Sunil Kumar- Civil Engineer, Sube Singh-Halqa Patwari and Lekh Raj as PW-1 to PW-6 respectively.

The defendants No. 1 and 2, in order to prove their case and to rebut the plaintiffs' claim, examined Ram Kumar s/o Jhuthar Mal, Krishan s/o Kundna, Narayan Dutt s/o Sunder Lal, Sunil Kumar-photographer, Dinesh Yadav-Draftsman, Krishan s/o Rampal Singh and P.R. Gupta-Building Expert as DW1 to DW7 respectively. Jamabandis for various years, Khasra Girdawari, site plans, photographs and notice etc. were exhibited.

The learned trial Court, after appreciating the facts and considering the witnesses and documents produced, decided issue Nos. 1 and 2 against the plaintiffs. It was held that there was a family settlement and exchange which was acted upon by them, therefore plaintiffs are no longer co-sharer over the joint property in question. Issues No. 3, 4, 5 and 7 were decided together in favour of the defendants and against the plaintiffs. It was held that the suit was time-barred. Issue No. 6 was not pressed. The net result was that the suit was dismissed vide judgment and decree dated 19.03.2014.

Being aggrieved of the judgment and decree, the plaintiffs filed first appeal and the learned Additional District Judge, Rewari, dismissed the appeal vide judgment and decree dated 31.07.2014.

The present regular second appeal has been filed by the plaintiffs being aggrieved of judgments and decrees passed by the learned Courts below.

Learned counsel for the plaintiffs argued that the Courts below erred in dismissing the suit. He contended that there was no family settlement and no exchange of property was done in pursuant to the family settlement. He argued that no date of settlement has come on record. Further contention raised was that plaintiffs are shown as owners as per revenue record and the Courts below are ignoring the revenue record as there is a presumption of truth attached to the revenue record. He contended that the Courts below have not appreciated the witnesses produced in proper prospective. Lastly a faint effort was made to state that there was no limitation to file the suit.

The dispute involved in the present litigation is restricted in a very narrow area i.e. whether there was a family settlement which was acted upon and as a result, the defendants No. 1 and 2 constructed their residential house on the suit property.

This was rather the specific stand taken by the defendant No. 1 and 2 which was denied by the plaintiffs. The plaintiffs produced Jamabandies to show that earlier their ancestors were the owners of the suit land and subsequently plaintiffs and the performas defendants have been recorded as owners. Mahabir PW-1 stated in his affidavit that defendants No. 1 and 2 had forcibly constructed their houses on the suit property. But in his cross-examination, he admitted that the construction was raised by the defendants in the year 1980. Lekh Raj son of Niranjana PW-6 admitted that defendants No. 1 and 2 constructed houses on the suit property. He admitted that plaintiffs are not in possession of any portion of the suit property.

On the other hand, defendants No. 1 and 2 were able to establish that the construction was raised on the suit property around the

years 1987-88 and no objection was raised by the plaintiffs. DW-1 Ram Kumar, a labourer was produced and DW-2 Krishan, Mason appeared before the Court and stated that they had worked during the construction of the house in the year 1987-88. It was stated that the plaintiffs and the performants defendants used to visit the construction site and never raised any objection. Though the building experts were produced by both the sides but the reports were contradictory as the building expert of plaintiffs' side said that the construction was about 10 to 11 years old and the building expert of the defendants No. 1 and 2 said that construction was not less than 20 years old. The said reports could not have been relied upon. But Mahabir PW1 had admitted that construction was raised in year 1980. The Local Commissioner report Ex. PX/6 was to the effect that Jaipal had constructed his residential house over 9.5 Marla of Khasra No. 169 and Rampal was in possession of remaining 12.5 Marla. Against all this evidence the plaintiffs failed to prove that construction was raised 4 to 5 years prior to filing of the suit. Nothing was brought on record by the plaintiffs to establish that they had raised any objection at the time of construction of the houses. It had also come on record by way of admission and cross-examination that plaintiffs were residing in old abadi and the defendants are residing in new abadi.

DW3 Narayan Dutt who is the neighbour of the defendants also corroborated the fact that the defendants had constructed their house in the year 1987-88. He deposed that the properties were exchanged between the defendants and the plaintiffs. DW6 Krishan also deposed that there was an oral family settlement 20 to 25 years back and disputed property was exchanged with the property having Ahata No. 57, ghar No. 103, 104 and

105. The evidence brought on record shows that there was an oral family settlement which was acted upon by the parties. The plaintiffs except for making bald statements could not establish that there was no family settlement which was acted upon. Rather the conduct of not raising any objection and keeping quiet for almost 20 years strengthen the case of the defendants No. 1 and 2 that there was a family settlement and the properties were exchanged and thereafter the defendants raised construction of their houses. If there was a family settlement which was acted upon, the plaintiffs ceased to be co-owners over the joint property in question. In such circumstances, the Courts below could not have decreed the suit for possession.

The second contention raised by learned counsel for the plaintiffs raises a legal issue on which there cannot be any quarrel. Learned counsel raised an issue that presumption of truth is to be attached to the revenue record. The said issue has been dealt with by the Full Bench of this Court and it has been held that rebuttable presumption of truth is attached to the revenue entries.

The Full Bench of this Court in ***Ram Chander Vs. Bhim Singh and others***, 2008 (3) RCR (Civil) 685 has held as under :-

“22. Revenue entries reflect the rights of the parties as opposed to conferring rights and raise rebuttable presumptions as to their correctness. They reflect an existing state of affairs, namely, an existing title or a state of possession. Entries in revenue records neither confer nor deprive a person of his title, whether joint or separate. Rectangle numbers and Killa numbers are revenue measures, used by revenue authorities to identify

and describe fields that constitute the ownership of a land owner. A holding may be divided into different Khewats, Khataunis, rectangles and killas/khasras all bearing different numbers. Where parties are joint owners or co-sharers, the land would comprise of a Khewat or khewats, different khataunis, rectangles and/or khasra/killas numbers. Thus, where a group of land owners holds land in joint ownership and are reflected as owners in common of the khewat, commonly known as the joint khewat, they would continue to remain owners in possession of the land, though described as being situated in different khataunis, rectangles and khasra/killas numbers. Division of land into different rectangles, khasra or killas numbers does not alter the nature of property held in common or the rights of co-sharers flowing therefrom. The Full Bench in Lachhman Singh's case (supra), disregarded the nature of joint property and by placing undue reliance upon artificial divisions of land meant to identify land, erred while holding that a vendee, who purchases land from a joint khewat by reference to specific rectangles and khasra numbers, does not become a cosharer in the entire joint khewat.”

In the above said decision, it has been held that entries in the revenue record raise a rebuttable presumption.

The presumption is not absolute, it is rebuttable presumption. Merely because the plaintiffs had produced the revenue entries showing them to be the owner of the suit property is not sufficient to decree the suit.

Rather, as discussed above, the defendants were able to successfully rebut the said entries. It was proved that as per the oral family settlement the

properties were exchanged and thereafter the defendants raised construction of their houses on the suit property. The plaintiffs raised no objection for almost 20 years regarding the construction raised. In such circumstances the plea raised by the counsel cannot be accepted.

As per the above judgment, rebuttable presumption of truth is there to the revenue entries. It is not an absolute proof. In the present case, as discussed above, the defendants were able to rebut the presumption raised by the revenue entries. It has been proved that the properties were exchanged in pursuance to a family settlement.

The contention raised by learned counsel that since the plaintiffs are shown as owners in revenue record, therefore, the Courts below should have decreed the suit, cannot be accepted.

The issue raised by learned counsel that the suit was within limitation needs no adjudication at this juncture as the issues have been decided by Courts below on merit. More-over it has been found that the house was constructed almost 20 years prior to filing of the suit. It has further come on record that the plaintiffs had raised no objection at the time of construction of the house and they kept mum for almost 20 years. In such circumstance, the appeal being bereft of any merit is hereby dismissed.

In such circumstance, no fault can be found in the judgments and decrees passed by learned Courts below.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed,
however, with no order as to costs.

5.12.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No