

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

RSA No. 2107 of 2015

DATE OF DECISION : 08.11.2017

Prem Nath and another

.... APPELLANTS

Versus

Surjit Singh and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Rajeev Dev Sharma, Advocate,
for the appellants.

* * *

AVNEESH JHINGAN, J.

The present regular second appeal is at the behest of defendants No.1 and 2 being aggrieved of the judgments and decrees passed by the learned courts below decreeing the suit for permanent injunction filed by the plaintiff.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The plaintiff filed a suit for permanent injunction against the defendants restraining them from interfering in any manner, by banna shikni or otherwise over the possession of the plaintiff as owner of the premises and the land detailed in the suit.

The factual averments made by the plaintiff in the suit are that

he along with his co-sharers is owner in possession of the land measuring 5 kanals 17 marlas comprised in khasra No. 65/4, as detailed in the plaint. It was averred that the land exists in the abadi and there is a family gurudwara. It was further averred that the defendants had no right with respect to the suit land but being influential persons, they were committing trespass through banna shikni. It was in these circumstances that the suit was filed.

On notice, defendants No.1 and 2 filed written statement. Apart from raising preliminary objections, reply was filed on merits.

Defendant No.3 was proceeded ex-parte.

The learned trial court framed the following issues :-

- (1) Whether the plaintiff was in possession of the suit property and the defendants threatening to interfere with the same? OPP
- (1A) Whether plaintiff is entitled to permanent injunction as prayed for ? OPP
- (2) Whether the plaintiff has not come to the Court with clean hands ? OPD
- (3) Whether no cause of action accrued to the plaintiff to file the present suit ? OPD
- (4) Relief

The plaintiff in support of his suit adduced evidence. He himself stepped into the witness box as PW.1. Jamabandi for the year 2001-02 and khasra girdawari for the period from Sauni 2003 to Hari 2005 were placed on record as Ex.P1 and Ex.P2, respectively. To rebut the evidence of the plaintiff, defendant No.1 stepped into the witness box as DW.1. Joginder

Pal and Panch of Gram Panchayat of village Sehowara appeared as DW.3. An agreement dated 30.06.2011 was placed on record as Ex.D1 and photographs were produced as Ex.D2 to Ex.D12.

The learned trial court after considering the witnesses and evidence produced before it and after appreciating the averments made in the suit and the written statement, decreed the suit of the plaintiff vide its judgment and decree dated 01.12.2012.

Aggrieved of the said judgment and decree, defendants No.1 and 2 filed the first appeal. Learned District Judge, Pathankot, vide judgment and decree dated 26.11.2014 dismissed the appeal and upheld the judgment and decree passed by the learned trial court.

Hence, the present appeal.

I have heard learned counsel for the defendants and have gone through the judgments and decrees of the learned courts below and the trial court record.

Learned counsel for the defendants has argued that the learned courts below should not have relied upon the jamabandi Ex.P1, wherein the plaintiff along with Sukhdev Singh and Surinder Kaur were recorded as co-sharers in joint possession of land measuring 5 kanals 17 marlas comprised of khasra No. 65/4. He further argued that the possession recorded in khasra girdawari Ex.P2 could also not have been relied upon, as admittedly the land was inhabited area. He further relied upon agreement dated 30.06.2011, Ex.D1, to argue that Samitri Devi, Chiman Lal and Jaswant Raj transferred

possession of one house built on 12 marlas of land in favour of defendants No.1 and 2.

While arguing the appeal, learned counsel has specifically stated that he is not pressing five questions of law framed in the appeal but is only adhering to the issue raised above. He concluded his arguments by submitting that in abadi deh, reliance could not have been placed on the revenue record and the agreement could not have been ignored.

While dealing with the contention raised by learned counsel for the appellants, it would be pertinent to note that the suit was only with regard to permanent injunction restraining the defendants from interfering in possession of the plaintiff over the suit property. In such circumstances, the presumption of truth can be attached to the entries of the revenue record. These entries raise rebuttable presumption. 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 co-sharer in the entire joint khewat."

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

In the present case, the learned courts below have not erred in relying upon the entries of the revenue record, as the presumption raised

was not rebutted by the defendants.

The agreement Ex.D1 relied upon by the defendants has not come as a handy tool for them for the reason that DW.1 in his cross-examination admitted that the agreement does not bear any khasra number. He further admitted that the khasra girdawari entry of the land mentioned in the agreement Ex.D1 was never entered in the name of Samitri Devi and others, who were the alleged vendors of defendants No.1 and 2. These admissions coupled with the fact that no application was moved for correction of khasra girdawari will not enhance the defence taken by the defendants. It has come on record by way of admission of DW.1 that Samitri Devi, the vendor, had never purchased part of the land in dispute, rather she along with other vendors were natives of a different village. The entire issue was clinched when DW.1 admitted that the land covered by Ex.D1 falls in khasra No. 65/6. Even otherwise, it has not been proved that the said agreement ultimately culminated into a sale deed.

The plaintiff was able to support the claim made in the suit. The defendants failed to put forth a defence as the presumption raised by the entries in the revenue record was not rebutted. Ex.D1 was not substantiated, as it came in the the cross-examination of defendant No.1 that the suit land and the land mentioned in agreement were two different lands and further that the vendors in the agreement were not true owners of the land. In such circumstances, the defendants could not have a better title than their alleged vendors.

During the course of hearing, learned counsel for the appellants could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first appellate court and the same deserves to be upheld.

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.

November 08, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes