

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

103

RFA No.2001 of 2017(O & M)

Date of Decision:12.07.2017

Ram Kavar and others

....appellants

Versus

Gram Panchayat Ismailpur and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Dinesh Arora, Advocate
for the appellants

ARUN PALLI, J. (ORAL):

This is an appeal against the judgement dated 21.03.2015 rendered by the Additional District Judge, Jhajjar, vide which claim of the appellants under Section 30 of the Land Acquisition Act, 1894 (for short, 'the Act') had since been dismissed with costs.

The claim set out by the appellants was that they were in possession of a land bearing khewat No.158 min 155, khatoni No.250, khasra No.2//23/2(4-0), 5//14(8-0), measuring 12 kanal 0 marla as Gairmarusi in the revenue estate of village Ismailpur. It was claimed that earlier the said land was Banjar Kadim but, in the year 1970, their uncle namely Sh.Shera son of Ishwar developed the same into an agricultural land by incurring substantial expenses. Shera died issueless and by virtue of a Will dated 13.10.2015, he bequeathed his interest in the said land, to the extent of ½ share in favour of the appellants and the rest ½ share in favour of Karan Singh son of Umara Singh son of Ishwar. And, since then

petitioners have been in cultivating possession thereof as Gairmarusi. Entries in the record of rights wrongly depicted Gram Panchayat (respondent No.1) as owner of the disputed land. Subsequently, the said land was acquired along with another chunk by the Government for the purpose of constructing a by-pass. And, for, the Gram Panchayat, Ismailpur, staked its claim for compensation qua the acquired land, thus the dispute.

In response to the claim made by the appellants, respondent-Gram Panchayat maintained that it held title to the disputed land and had always been in possession thereof till it was acquired. The claim of the appellants, to receive the compensation, was wholly misconceived, for, they had no right, title or interest, therein. Entries in the name of Shera in the revenue record were mere paper transactions, for, the Gram Panchayat used to lease out the disputed land on yearly basis since 1965-66 to 2005, for the income of the Gram Panchayat.

On a consideration of the matter in issue and the evidence led by the parties, the reference Court conclusively concluded that copies of the lease register for the year 1962 to 2015 Ex.R1 to Ex.R24 and copies of the receipt of the lease rent for the period 1975 to 1997 (Ex.R25 to Ex.R43), revealed that the land comprised in khasra No.2//23/2 and 5//14 was leased out to different farmers by the Gram Panchayat from time to time on yearly basis. Thus, the entries in favour of Shera son of Ishwar reflected in jamabandi Ex.P1 to Ex.P8 were falsified and duly controverted in the wake of the evidence led by the Gram Panchayat. The conclusion arrived at reads thus:

“Petitioners failed to create any doubt on above

oral and documentary evidence by way of cross examination of RW-1. There is nothing on record to show that the said documents are forged or fabricated in any manner. The Jamabandi for the year 1971-72 produced by petitioners clearly shows that the land in khasra No.2//23/2 and 5//14 was leased out to Hera son of Ishwar for sum of Rs.60/-. On the other hand, the documents produced by respondent No.1 shows that the land comprised in khasra No.2//22 was leased out to Shera son of Ishwar for one year 1967-68 vide receipt Ex.R-51 the land comprised in khasra No.5//15 was leased out to Shera son of Ishwar for the year 1968-69 vide receipt Ex.R6; the land comprised in khasra No.2//25 was leased out to Sher Singh son of Ishwar for one year 1972-73 vide receipt Ex.R-10. No other record is available with respondent No.1 qua the leasing of land to Shera son of Ishwar. Evidence on record shows that the land comprised in khasra No.2//23/2 and 5//14 was leased out to different farmers, from time to time on yearly rent basis, as mentioned in para No.16 above. The documents Ex.R-2 to Ex.R-12 being more than 30 years old, presumption of truth is attached to the same under Section 90 of the Indian Evidence Act, regarding lease of land comprised in khasra No.2//23/2 and 5//14. Thus, the entries in favour of Shera son of Ishwar reflected in Jamabandi Mark-A and Ex.P1 to Ex.P8 are falsified and duly

controverted in respondent evidence. Therefore, petitioners failed to prove their continuous adverse possession over the suit land in any manner. Even otherwise their possession over the acquired suit land in khasra No.2//23/2 and 5//14 as permissive by way of annual lease. The inadvertent repetition of said entries in the revenue record does not confer any right, title or interest in favour of the petitioners in any manner. The two Wills executed by Shera are nonest in the eyes of law, as he was not having any estate to transfer amongst his LRs.”

A bare analysis of the above irresistibly shows that the documents brought on record by the Gram Panchayat rather proved that the land comprising khasra No.2//22 was leased out to Shera son of Ishwar in the year 1967-68, vide receipt Ex.R51 and the land comprised in khasra No.5//15 was leased out to Shera son of Ishwar in the year 1968-69, vide receipt Ex.R6. And the land situated in Khasra No.2//25 was leased out to Shera for one year i.e.1972-73 vide receipt Ex.R10. That being so, the claim of the appellants that the land comprised in khasra No.2//23/2 and 5//14 has been in occupation and possession of Shera son of Ishwar was wholly misconceived. Particularly, when the enormous evidence brought on record by the Gram Panchayat proved that the land comprised in said numbers was indeed leased out to different farmers from 1965-66 to 2005 for the income of Panchayat. Further, nothing was brought on record to question the authenticity or veracity of these documents and entries recorded therein. Even the plea set out by the appellants that they had

become owners of the disputed land by prescription or adverse possession was also rejected, for, they failed to lead any evidence in this regard. In any case, the said plea was inherently contradictory as the alleged possession of late Shera upon the land comprised in khasra No.2//23/2 and 5//14, by way of annual lease, was merely permissive in nature. On being specifically asked, learned counsel for the appellants could not point out as to how the conclusion arrived at by the reference Court was either contrary to record or erroneous in law. Nothing was brought to the notice of the Court that could vitiate the judgement that is being assailed.

That being so, the only and the inevitable conclusion that the reference Court could reach was to dismiss the claim of the appellants. Resultantly, the appeal is dismissed being devoid of merit.

CM-5195-CI-2017

This is an application seeking condonation of delay of 643 days in re-filing the accompanying appeal.

For, vide an order of even date, the appeal has been dismissed, no formal order is necessary to be passed in this application.

July 12, 2017
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(ARUN PALLI)
JUDGE

Whether speaking/reasoned

Yes/No.

Whether reportable-

Yes/No