

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

103-2

RFA No.2002 of 2017(O & M)

Date of Decision:12.07.2017

Mukesh Devi 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 earlier the disputed land bearing khewat No.158/155 min, khata No.246, khasra No.5/5(8-0), 6 (8-0), measuring 16 kanal 0 marla as Gairmarusi in the estate of village Ismailpur, was in occupation and possession of Sh.Om Parkash (grandfather of petitioners No.2 to 4 and father of petitioners No.5 to 9). The nature of the land was Banjar but late Om Parkash developed the said site into an agricultural land in the year 1970 by incurring huge expenses. For, Om Parkash expired in the year 2000, the appellants being his successors entered in cultivating possession of the disputed land as Gairmarusi. Further, in the record of rights Gram Panchayat(respondent No.1) was

wrongly depicted 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 appellants or their forefathers had no right, title or interest, therein. The entry in the revenue record in the name of Om Parkash was merely a paper transaction as Gram Panchayat, Ismailpur, remained in actual, physical possession of the acquired land, till its acquisition.

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, Ex.R44 to 49 and copies of the receipt of the lease rent for the period 1975 to 1997 (Ex.R25 to Ex.R43), revealed that Gram Panchayat used to lease out the disputed land on yearly basis since 1965-66 to 2005. 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.5//5 and 5//6 was leased out to Om Parkash son of Hazari for sum of Rs.145/-. On the other hand, the documents produced by

respondent No.1 shows that the land comprised in khasra No.5//5 and 5//6 was leased out to different persons as reflected 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.5//5 and 5//6. Thus, the entries in favour of Om Parkash son of Hazari reflected in Jamabandis Ex.P10 to Ex.P1 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.5//5 and 5//6 was 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.

No doubt, in the jamabandi for the year 1971-72 brought on record by the appellants, it was shown that the land comprised in khasra No.5//5 and 5//6 was leased out to Om Parkash son of Hazari, for a sum of Rs.145/-, but on the contrary, the documents proved by the respondent-Gram Panchayat, showed that the land comprised in the said numbers was leased out to different individuals on yearly basis since 1965-66 to 2005 for the income of the Panchayat. Further, the documents Ex.R2 to Ex.R12 being more than 30 years old, carried a presumption of truth under Section 90 of the Indian Evidence Act. Nothing was brought on record to question the authenticity or veracity of these documents and entries recorded therein.

Thus, the entries in the jamabandi Ex.P10 in favour of Om Parkash son of Hazari were falsified and duly controverted in the wake of the evidence led by the respondent-Panchayat. Further, the appellants failed to substantiate their plea that they had acquired title by prescription or adverse possession. Even otherwise, their alleged possession over the acquired land in khasra No.5//5 and 5//6 could only be termed as 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-5197-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

*neenu***(ARUN PALLI)**
JUDGE

Whether speaking/reasoned

Yes/No.

Whether reportable-

Yes/No