

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

**RSA No.2550 of 2015 (O&M)
Date of decision: 04.08.2017**

Gian Chand and others

... Appellants

Vs.

Hira Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Govind Chauhan, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present regular second appeal, at the hands of unsuccessful defendants, is directed against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for permanent injunction filed by the plaintiff-respondent was decreed by the learned trial Court, vide its impugned judgment and decree dated 15.03.2011 and first appeal of the defendants also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 29.01.2015.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of the impugned judgment, are that the plaintiff was in actual, physical and cultivating possession of land measuring 22K-0M comprised of khewat No.128, Khatoni No.261, Rect. No.91, Khasra No.9/1 (6-0), 10/1 (2-0), khatoni No.246, Rect. No.91, khasra No.14/2 (6-0), 15 (8-0) situated in village Sambli,

Tehsil Nissing, District Karnal as per jamabandi for the year 2005-2006, as “Dohlidar” since the times of his forefathers. The defendants had absolutely no right, title or interest in the land in question and they were bent upon to take possession of the land in question forcibly and illegally. Defendant No.1 Gian Chand had moved an application for correction of khasra-girdawari before the learned Assistant Collector Ist Grade, Nissing that he and the plaintiff were cultivating land measuring 8K-0M comprised in Rect. No.91, khasra No.9/1 (6-0), 10/1 (2-0) out of the land in question. It had also been pleaded that on 07.12.2008, the defendants tried to reap the crop sown by the plaintiff in the land measuring 08K-0M out of the land in question in an illegal manner, but could not succeed due to timely intervention of the plaintiff and other persons working in the nearby fields. The plaintiff approached the defendants and requested them not to take illegal possession of the land in question, but the defendants proclaimed that they would take the possession of the land in question as soon as possible.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for a decree for permanent injunction as prayed for? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD.

4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
5. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of the necessary parties? OPD
6. Relief.

In order to prove their respective stands taken in their pleadings, both the parties produced their 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 plaintiff has duly proved his case, by leading cogent and convincing evidence. Accordingly, his suit for permanent injunction was decreed by the learned trial Court vide its judgment and decree dated 15.03.2011. Defendants felt aggrieved and filed their first appeal, which also came to be dismissed by the learned Additional District Judge vide impugned judgment and decree dated 29.01.2015. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

Case of the plaintiff-respondent was based on documentary evidence. Bare perusal of the jamabandi Ex.P1 and khasra girdawari Ex.P2 will make it crystal clear that the plaintiff was recorded in the settled and peaceful possession over the suit land. As per the provisions of law contained in Section 44 of the Punjab Land Revenue Act, 1887, presumption of truth is attached to the revenue entries. No doubt, such a presumption would always be rebuttable, but in the present case, defendants-appellants failed to rebut the statutory presumption, which was in favour of the plaintiff. In such a situation, plaintiff had been found entitled for the benefit of Section 109 of the Indian Evidence

Act, because presumption of truth attached to the revenue entries was not rebutted by the defendants. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

The view that has been 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).***

It is pertinent to note here that since it was a case of permanent injunction only and issue of title was not involved, settled and peaceful possession of the plaintiff, which was duly proved on record, would be the determining factor. Defendants-appellants sought to build their case on the basis of technicalities alone. In fact, stand taken by the defendants-appellants was self-contradictory. On the one hand, they were claiming themselves to be in cultivating possession of the suit land and on the other hand, they themselves had filed an application for correction of khasra girdawari before the competent revenue authority. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below and the

same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned first appellate Court in paras 26 and 27 of the impugned judgment, which deserve to be noticed here, read as under: -

“By way of present suit, the respondent-plaintiff has sought the relief of injunction that the appellants-defendants be restrained from dispossessing or interfering in the possession of the respondent-plaintiff over the land in question. In order to seek the relief of injunction, it was incumbent upon the respondent-plaintiff to prove his settled or peaceful possession over the suit land. The perusal of the jamabandi for the year 2005-06 Ex.P1 and khasra girdawari for the year 2008, Ex.P2 make it ample clear that the respondent-plaintiff has been duly recorded in actual, physical and cultivating possession of the suit land in the capacity of Dohlidar. The entries recorded in the jamabandi carries the presumption of truth and the said presumption has not been rebutted by leading cogent evidence. However, the appellants-defendants have claimed their possession over the suit land, but they have not placed any document on record wherein the possession of the appellants-defendants over the suit land is reflected and in that eventuality, mere oral assertions of appellants-defendants regarding their possession over the suit land is of no value, specifically when, the

respondent-plaintiff has proved his possession over the suit land by way of placing on record the revenue record.

Moreover, in the application, Mark-B filed before the Assistant Collector IInd Grade, Nissing for the correction of khasra girdawari, the defendant No.1 Gian Chand has been claiming himself in joint possession with the respondent-plaintiff qua land measuring 8K-0M comprised in Rect. No.91, Khasra No.9/1 (6-0), 10/1 (2-0) out of the suit land, whereas, in the written statement, the appellants-defendants have claimed their exclusive possession over the suit land. In another application, Mark-C filed before the Assistant Collector, IInd Grade, Nissing for correction of khasra girdawari, the appellants-defendants have claimed that they are in cultivating possession with their brothers namely Ramesh Chander & Ajmer Singh over the land measuring 14K-0M comprised in Rect. No.91, Killa No.14/2(6-0), 15(8-0) out of the suit land. In this way, the appellants-defendants have taken different stands in different proceedings pertaining to the suit land and as such, it can be said that the appellants-defendants have not approached the court with clean hands.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the impugned judgments and decrees passed by both 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 the 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 **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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.

[RAMESHWAR SINGH MALIK]
JUDGE

04.08.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No