

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3505-2015(O&M)

Date of Decision:15.05.2017

Jora Singh and others

.....Appellants

Versus

Gurmail Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Ranjit Singh Ghuman, Advocate,
for the appellants.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful defendants are in regular second appeal 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 05.06.2012 and the appeal of the defendants was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 17.07.2014.

Brief facts of the case, as noticed by the learned District Judge in para 2 and 3 of his impugned judgment, are that undisputedly, the land measuring 18 kanals 16 marlas bearing khewat No.139, khatoni No.164, khasra Nos.95(8-0), 96(8-0), 848/97(2-16) was the ownership of Provincial government as per jamabandi for the year 2003-04 wherein Ajaib Singh son of Tara Singh had been recorded as tenant at-will (gair marusi). In column No.9 of jamabandi, which was meant for rent, it was recorded that he was paying rent as per the instructions of government.

However, in Khewat No.103, Khatoni No.127, Khasra No.94 (8-0) in the jamabandi for the year 2003-04 Ajaib Singh and Amar Kaur had already been recorded as co-sharers to the extent of 136/160 share, whereas Provincial government was recorded as co-sharer to the extent of 24/160 share.

It was the case of the plaintiff that said Ajaib Singh had sold his possession over the suit land measuring 18 kanals 16 marlas, khewat No.139, khatoni No.164, khasra Nos.95(8-0), 96(8-0), 848/97(2-16) and land measuring 8 kanals bearing khasra No.94(8-0) in favour of plaintiff Gurmail Singh for a sum of ₹5,50,000/- vide agreement dated 7.11.2005 (copy of which has been placed on record as Ex.P6). According to the plaintiff, he and his brother Gurmit Singh were in possession of the suit property; that they were paying rent to the provincial government and their possession was lawful but defendants Jora Singh, Pala Singh and Gurdip Singh had no concern with the suit property and they want to dispossess him.

Having been served in the suit, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. *Whether plaintiff is entitled to permanent injunction as prayed for?OPP*
2. *Whether suit is not maintainable?OPD*
3. *Whether no cause of action accrued to the plaintiff?OPD*
4. *Relief.”*

In order to substantiate their respective stands taken in their pleadings, both the parties produced their documentary as well as oral

evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved his case by leading cogent and convincing evidence. Accordingly, suit of the plaintiff for permanent injunction was decreed by the learned trial Court vide its impugned judgment and decree dated 05.06.2012. Feeling aggrieved, defendants filed their first appeal which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 17.07.2014. Hence, this regular second appeal, at the hands of the defendants.

Heard learned counsel for the appellants.

Before proceeding further, it deserves to be noticed here that the appeal was delayed by 3 days in filing and it was also delayed by 92 days in re-filing. However, both these applications were allowed so as to decide the appeal on merits instead of technicalities, including the delay.

It is not in dispute that ownership of the suit land was with the Provincial Govt. Plaintiff did not seek any declaration qua title of the suit land. Claiming himself to be in settled possession, having purchased possessory rights from Ajaib Singh, who was admittedly in possession earlier, plaintiff filed the suit for permanent injunction restraining the defendants from interfering in his peaceful possession. The star argument raised on behalf of the appellants before the learned Courts below as well as before this Court is that there was an order in their favour passed by Naib Tehsildar, whereby their application for correction in khasra girdawri was accepted.

However, it has also come on record that said order passed by Naib Tehsildar came to be set aside by the higher revenue authority vide its

order dated 04.03.2009, Ex.PX. Except this evidence, which was no more available to the appellants, there was nothing in their favour which might even remotely suggest that they had ever been in possession of the suit land. On the other hand, plaintiff-respondent has duly established his cultivating possession over the suit land by leading cogent and convincing evidence. 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.

Having failed before the learned trial Court, defendants-appellants tried to make improvement in their case before the learned first appellate Court by moving an application under Order 41 Rule 27 of the Code of Civil Procedure. However, said application was also found without any merit and it was dismissed by the learned first appellate Court. There was sufficient evidence brought on record at the hands of the plaintiff to prove his cultivating possession over the suit land. Defendants-appellants failed to rebut the evidence produced by the plaintiff and they were also unable to establish their counter-plea taken in their pleadings to show that they were in actual physical possession of the suit land. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate Court in para 20

to 22 of its impugned judgment, which deserve to be noticed here, read as under:-

*“In **Bahadur Singh and others' case(supra)**, it was held by our own Hon'ble High Court that khasra girdawri prima facie finding regarding possession but the case in hand there is no order of competent authority to correct the khasra girdawri in the name of the plaintiff, rather order Ex.D1 has been set aside by the Collector vide order Ex.PX.*

On the independent examination of the evidence on the record, this court reaches to the conclusion that plaintiff has failed to prove the possession over of the suit property and it has come into evidence that rapat No.273 dated 28.1.2008 has been wrongly and unauthorizedly entered on the basis of order Ex.D1 which has been set aside by the Collector vide order Ex.PX. Thus, no benefit can be derived by the defendants/appellants from the said entry. Thus, the findings of the learned trial court on all the issues are based upon proper appreciation of evidence and the same do not call for interference, as such, the same are hereby affirmed.

Now coming to the application for additional evidence. The defendants/appellants want to place on record copy of jamabandi for the year 2008-2009 and khasra girdawri for the period from Kharif 2009 to Rabi 2012 but it has been prepared much after the institution of the suit. The defendants have already produced on record jamabandi for the year 2003-04 as EX.D2. The entry regarding rapat No.273 dated 28.1.2008 is mentioned therein. Similarly in khasra girdawri from Sauni 2009 to Harhi 2013 there is entry regarding rapat No.273 dated 28.1.2008. To the mind of this Court, these documents are not necessary for just decision of the case. As such, the application filed by the defendants/appellants under order

41 rule 27 CPC is dismissed. The facts in case Gurnek Singh and another Versus Gurbachan Singh and others, Gurdial Singh and others Versus Mam Chand and others and in Ram Niwas Versus Kalu Ram and another (supra) are distinguishable.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

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 the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

May 15, 2017
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(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No