

RSA No. 4082 of 2015 (O&M)

1

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

RSA No. 4082 of 2015 (O&M)

Date of Decision: 24.8.2017

Rohtash

.....Appellant

Vs.

Ram Nath (deceased through) through LRS

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Krishan Singh, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiff (wrongly typed as appellant-defendant in the memo of the parties) has approached this Court by way of instant regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration with consequential relief of permanent injunction was partly decreed by the learned trial court, vide its impugned judgment and decree dated 30.9.2011 and his first appeal was also disposed of by the learned first appellate court vide impugned judgment and decree dated 18.3.2015, modifying the decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that plaintiff filed suit for declaration with consequential relief of permanent injunction against the

defendants, inter alia, on the allegations that he belongs to a Balmiki Caste. He was in actual physical possession as Bhondedar since the time of his ancestors of the agricultural land comprising of Khewat No. 121/116 and khatoni No. 239/241/1/, Rect No. 9, killa No. 20/2/(3-7), Rect. No. 10, Killa No. 16 (7-8), 17/2 (1-10) measuring 11 kanals 15 marla situated in the revenue estate of village Chandla Dungawras, (Pachgaon), Tehsil and District Gurgaon. It was further averred that previously, the land in question was given on Bhondedari to his ancestors by the proprietors of patti and the villages and bisewadars of the village. It was further averred that there was custom in District Gurgaon and also in village Pachgaon that Biswedars of village give some land to the members of the Scheduled and Backward Classes, i.e. the persons who render services in marriages and all other duties of Bhondedari. Previous great grand-father, grand-father and then father of the plaintiff were rendering all services to the persons of village and, therefore, he was rendering all type of services to the villages and Biswedars of the village and patties. It was further averred that the plaintiff was in continuous cultivation possession of the suit land same was evident from the revenue record and also from khasra girdawari. The defendant or their ancestors had never been in possession of the suit land or any part thereof at any time in any capacity. Even defendants were not residing in village. They were residing away from the village in connection with their jobs, services and business. It was further averred that he had come to know that the defendants, in collusion with revenue officials, had got prepared illegal Fard Badar No. 3 dated 30.9.2002/23.10.2002, whereby the defendants had been shown as bhondedars of the suit land, so the plaintiff was asserting the said Fard Badar as well as subsequent entries, if any, incorporated in the revenue

record on the basis of Fard Badar were totally wrong, illegal and incorrect. He further submits that defendants were residing outside the village and they had not rendered any type of service towards the persons of patti of land in question and towards biswedars and inhabitants of village. The revenue officer was not competent and empowered to effect said Fard Badar and also to effect any type of entry in the revenue record in favour of the defendants in respect of the suit land. Defendants came to village 2-3 times in a year only to look after and visit their respective houses. Defendants were bent upon to take forcible possession of the land in question. They had started interfering in the peaceful possession of the plaintiff over the suit land. Plaintiff called upon the defendants many a times of admit the claim of the plaintiffs but the defendants refused to accede the requests of the plaintiff.

Upon notice, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Defendants also filed their counter-claim praying that land measuring 11 kanals 15 marlas was given to them by Bisewdars of the village 80 years ago as bhondedars and they had acquired their bhondedari rights. Plaintiff filed his replication and reply to the counter-claim. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- “1. Whether the plaintiff alone is in actual physical cultivating possession as Bhondedar since the time of his ancestors in the land detailed in para No.1 of the plaint?
2. Whether the Fard Badar No.3 dated 30.9.2002/23.10.2002 is illegal, wrong and without jurisdiction, null and void?OPP
3. Whether the plaintiff has got no locus standi to file the present suit and same is liable to be dismissed?OPD
4. Whether the suit is not maintainable in the present

form?OPD

5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD

6. Whether the plaintiff has not come to the court with clean hands and concealed the true and material facts? OPD

7. Whether the suit of plaintiff is false and frivolous to his positive knowledge and same is liable to be dismissed?OPD

8. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, suit of the plaintiff was partly decreed to the extent that plaintiff was granted bhondedari rights only to the extent of share of his father, bhondedar-Bholu son of Sh. Bhikhari. Defendants were also granted their bhondedari rights to the extent of their shares qua land measuring 11 kanals 15 malras, as claimed by them in their counter-claim. Suit as well as counter-claim were decided by the learned trial court, vide its common impugned judgment and decree dated 30.9.2011.

Feeling aggrieved, plaintiff filed his first appeal which came to be disposed of by the learned first appellate court vide its impugned judgment and decree dated 18.3.2015, modifying the decree of the learned trial court. Defendants were also held entitled to the bhondedari rights to the extent of land measuring 11 kanal 15 marlas, till they were ejected by the biswedars. It was also clarified that name of Bholu son of Bhikhari through Sh. Rohtash was wrongly recorded as Gair Marusi in the jamabandi for the year 1982-83, which was accordingly set aside. Legal heirs of the persons

shown in column of possession in the jamabandi for the year 1963-64 (Ex.D1) were directed to be brought on record in the column of possession as bhonedars in the jamabandi for the years 1982-83 and in the subsequent jamabandis as well. Dissatisfied, plaintiff has approached this Court by way of present regular second appeal

Heard learned counsel for the appellant.

It has gone undisputed before this Court that whatever land was given by biswedars (proprietors) of the village to late Sh. Bholu son of late Sh. Bhikhari, plaintiff-appellant could have claimed his bhonedari rights only qua said land. He being son of late Sh. Bholu, instant wholly unwarranted litigation was initiated by the plaintiff-appellant only to claim the bhonedari rights qua the land which was never given to his father by any of the biswedars of the village. As per the pleaded case of the plaintiff-appellant, since defendants went away from the scene and the land remained unattended, it was the plaintiff who started cultivating the suit land and put his right of bhonedar on that land as well.

This plea raised by the plaintiff-appellant was wholly misconceived right from the day one, because no such right of bhonedar could have been conferred on him regarding the land which was not given to him by any of the biswedars of the village for its cultivation. That is what was held by both the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction in passing their respective impugned judgments and decrees and the same deserve to be upheld.

It is also a matter of record that defendants filed their counter claim which was also decreed by the learned trial court, vide same impugned

judgment and decree, whereby suit of the plaintiff was decided. However, plaintiff-appellant filed only one appeal before the learned first appellate court as well as before this Court. This material aspect of the matter would go to show that decree granted in favour of the defendants, while decreeing their counter-claim, by the learned trial court as well as by the learned first appellate court are not even challenged before this Court in the instant appeal.

In the absence of another appeal before the learned first appellate court as well as before this Court, there was no scope for the appellant to succeed in this litigation. It is so said, because the appellant was under legal obligation to challenge the decree passed by the learned trial court in the counter-claim, by filing separate appeal before the learned first appellate court, in case he was intending to challenge the same. However, plaintiff-appellant did not do so, for the reasons best known to him.

When learned counsel for the appellant was confronted with this factual as well as legal aspect of the matter, he had no answer and rightly so, it being a matter of record. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below will make it crystal clear that whatever was found due to the plaintiff-appellant, that has been given to him. Other relief, which the plaintiff was seeking qua the land under possession of the defendants, have been rightly denied to him because he

had no claim either on facts or in law qua the said land. Further, as noticed hereinabove, plaintiff-appellant did not challenge the decree passed by the learned trial court in the counter-claim filed by the defendants, meaning thereby he has accepted the said decree qua the counter-claim of the defendants. In this view of the matter, no fault can be found with the impugned judgments and decrees passed by the learned courts below and the same deserve to be upheld, for this reason as well.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 20 and 21 of its impugned judgment, which deserve to be noticed here, read as under:-

“In the present case it is not the case of the appellant that the ancestors of the respondents were not the Bhonedars of the land in dispute. It is not the case of the appellant how the name of the ancestors of respondents had wrongly been incorporated in the jamabandi for the year 1963-64 and in the subsequent jamabandies till 1982-83. It is also not the case of the appellant when the respondents were ejected from the land in dispute. The witnesses examined by the appellant has supported the case of the appellant and the witnesses examined by the respondents have supported the case of the respondents. But the revenue records are in favour of the respondents which shows that the predecessor-in-interest of the respondents along with predecessor-in-interest of the appellant were in joint possession of the suit land as Bhonedars. How the names of the respondents had been deleted in the jamabandi for the year 1982- 83 it is nowhere explained or proved. No evidence whatsoever has been produced by the appellant to

substantiate the fact that any legal proceedings were initiated against the appellant or in the alleged legal proceedings the respondents were ejected from the possession of the suit land. No evidence whatsoever has been produced by the appellant to substantiate the fact how the change in the jamabandi for the year 1982- 83 was carried out. No evidence whatsoever has been produced by the appellant to substantiate the fact that before carrying out the change in the entries of jamabandi for the year 1982-83 the notices were issued to the respondents. Merely because the names of respondents could not be incorporated in the jamabandi for the year 1982-83, it cannot be said that respondents have no concern whatsoever with the suit land. It is settled principle of law that there is a presumption of continuity in the entry of jamabandi unless and until the same is changed by operation or law or by cogent or convincing reason. It is also a settled principle of law that if the change is carried out in the entries of jamabandi without any reason then no weight can be attached to the subsequent entries of jamabandies and entries of the previous jamabandies shall prevail over the subsequent jamabandies. In the present case the previous revenue record are in favour of respondents. The change in the jamabandi for the year 1982-83 is without any basis. The respondents are also the Bhondedars over the suit land along with the appellant as per their share. Therefore, the revenue records are liable to be corrected in favour of the respondents along with appellant as per their respective shares as Bhondedars.

I have perused the impugned judgment and decree passed by the learned lower Court. There is no illegality or irregularity in the impugned judgment passed by learned lower Court. There is no scope to interfere. With these observations, the appeal filed by the appellant is hereby dismissed. However, the relief clause of the impugned judgment and decree is hereby modified to the effect that the suit of the plaintiff is decree only

to the extent that plaintiff has Bhoneddari rights only to the extent of share of Bhoneddari rights of Bholu son of Bhikhari and the defendants too have the Bhoneddari rights only to the extent of their share of Bhoneddari as recorded in Ex.D1, jamabandi for the year 1963-64 in the suit land denoted by Rect.no.9, Killa no. 20/2(3-7), Rect.No.10, Killa no. 16 (7-8), 17/2 (1-10), measuring 11 kanals 15 marlas situated in the revenue estate of village Chandla Dungarwas (Pachgaon), Tehsil and District Gurgaon till they are ejected by the Biswedars. The counter-claim filed by the respondents is hereby decreed to the effect that the land in question measuring 11 kanals 15 Marlas situated within the revenue estate of village Chandla Dungarwas Tehsil and District Gurgaon was given on Bhoneddari by the Proprietors and Biswedars of village Chandla Dungarwas to the fore-fathers of the persons whose names are mentioned in column of possession in the jamabandi for the year 1963-64 (Ex.D1). The persons whose names are mentioned in the column of possession in the jamabandi for the year 1963-64 (Ex.D1) along with the appellant are in cultivating possession of the suit land as Bhoneddars. The name of Bholu son of Bhikhari Bhoneddar through Rohtash son of Bholu 'Gair Marausi' has wrongly been inserted in the jamabandi for the year 1982-83 and, therefore, the same is hereby set aside. Now the name of the persons whose names have been shown in the column of possession in the jamabandi for the year 1963-64 (Ex.D1) and after the death of any of them, their heirs is liable to be corrected in the revenue records in the column of possession as Bhoneddars in the jamabandi for the year 1982-83 and in subsequent jamabandies. The revenue records are liable to be corrected accordingly.....”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not

RSA No. 4082 of 2015 (O&M)

refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

24.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No