

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

**RSA-5578-2015 (O&M) and
RSA-5579-2015(O&M)**

Date of Decision:07.03.2017

Gurbachan Singh and others

.....Appellants

Versus

Sarban Singh @ Surat Singh and others

.....Respondents

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

**Present: Mr.P.P.S.Duggal, Advocate,
for the appellants.**

RAMESHWAR SINGH MALIK, J.(Oral)

These two identical regular second appeals between the same parties, qua the same suit property and against the same impugned judgment, are being decided together, vide this common order, with the consent of learned counsel for the appellants in both these cases. However, for the facility of reference, facts are being culled out from RSA No.5578 of 2015.

Both these regular second appeals, at the hands of unsuccessful plaintiffs, are directed against the impugned judgment of reversal dated 21.08.2015 passed by the learned Additional District Judge, whereby first appeal of the defendants-counter claimants was allowed, setting aside the judgment and decree dated 16.04.2012 of the learned trial Court, whereby suit for permanent injunction filed by the plaintiffs-appellants was decreed and counter-claim of defendants for decree of possession, was dismissed.

Brief facts of the case, as noticed by the learned first appellate

Court in para 2 of its impugned judgment, are that Sohan Singh son of Chattar Singh was owner of the land in dispute. He used to live with the plaintiffs and during his life time said Sohan Singh gave the suit land to the plaintiff about 30 years back and since then the plaintiffs were claimed to be in peaceful possession of the land in dispute. Plaintiff No.1 Jarnail Singh and plaintiff No.2 Gurcharan Singh were in possession of land measuring 9 kanals 2 marlas each. Plaintiff No.3 Bohar Singh was claimed to be in possession of land measuring 31kanals 11 marlas, plaintiff No.4 was claimed to be in possession of land measuring 8 kanals, plaintiffs No. 5 to 7 were in possession of land measuring 29 kanals 12 marlas and plaintiff No.8 is in possession of land measuring 8 Kanals. The plaintiffs had further pleaded that their possession had been recorded In the revenue record. Defendants without any right or concern with the suit land were bent upon to dispossess the plaintiffs forcibly and illegally.

Defendants were served in the suit. They filed their joint written statement, raising more than one preliminary objections. They also filed their counter-claim seeking a decree of possession against the plaintiffs. Plaintiffs filed their replication to the written statement filed by the defendants and they also filed their reply to the counter-claim. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP*
- 2. Whether the suit is false and frivolous and deserves dismissal with special costs?OPD*
- 3. Whether the plaintiffs have no concern, right or title with the suit land?OPD*
- 4. Whether the defendants are entitled to possession of*

land measuring 100 Kanals as detailed in the counter claim, situated in the area of village Dulla Singh Wala, Tehsil & District Ferozepur and also to recover mesne profits from the plaintiffs (defendants in counter claim) for the occupation and use of land without the consent of the defendants and without any payment?OPD

5. *Whether the counter claim of the defendant is not maintainable?OPP*

6. *Relief.”*

In order to prove their respective pleaded cases, 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 plaintiffs have proved their case, whereas defendants could not prove their counter-claim. Accordingly, suit of the plaintiffs for permanent injunction was decreed and the counter-claim filed by the defendants was dismissed, vide judgment and decree dated 16.04.2012 passed by the learned trial Court.

Feeling aggrieved, defendants filed their first appeal which came to be allowed by the learned first appellate Court vide impugned judgment and decree dated 21.08.2015. Counter-claim filed by the defendants for possession, was decreed, whereas the suit filed by the plaintiffs for permanent injunction, was dismissed. Hence, this regular second appeal, at the hands of the plaintiffs.

Heard learned counsel for the appellants.

The pleaded and argued case on behalf of the appellants-plaintiffs was only for permanent injunction on the basis of their possession. It was their further pleaded and argued case that because they were in old and settled possession, they could not have been dispossessed by the

defendants, except in due course of law. On the other hand, counter-claim of the defendants for possession of the suit property was based on their title.

However, since the learned trial Court mis-directed itself while completely mis-reading and mis-interpreting true facts of the case as well as evidence available on record, the learned first appellate Court was well within its jurisdiction to pass the impugned judgment and decree, setting aside the judgment and decree of the learned trial Court. Having said that, this Court feels no hesitation to conclude that the findings recorded by the learned first appellate Court have been found based on sound reasons and the impugned judgment and decree deserve to be upheld.

Facts as well as evidence have been found clearly speaking in favour of the defendants and against the plaintiffs-appellants. Admittedly, Late Sh.Sohan Singh was the owner of the suit property. After his death, mutation No.216 came to be entered and sanctioned in favour of Kartar Singh and Kartar Kaur, who were held to be legal heirs of deceased Sohan Singh. Claim of Kartar Singh and Kartar Kaur to inherit the estate of Sohan Singh was contested by the plaintiffs-appellants, but they failed before the revenue authorities. Kartar Singh and Kartar Kaur were held to be the legal heirs of deceased Sohan Singh.

Consequently, mutation of inheritance came to be sanctioned in favour of Kartar Singh and Kartar Kaur, thus, they became owners of the suit property. It is also not in dispute that Kartar Singh and Kartar Kaur were the predecessor-in-interest of defendants. Mutation in favour of Kartar Singh and Kartar Kaur was sanctioned by the revenue authorities as far back as in the year 1986 and the plaintiffs never challenged the said mutation of inheritance. It was so recorded in the jamabandi Ex.D7. Further, there was

sufficient documentary as well as oral evidence in favour of the defendants-respondents, to prove their ownership and entitlement for possession of the suit land.

On the other hand, total case of the plaintiffs-appellants was for injunction to protect their possession till they are dispossessed by the true owners, in accordance with law. Exactly, that is what has been held by the learned first appellate Court. In this view of the matter, it can be safely concluded that the learned first appellate Court committed no error of law, while passing its impugned judgment and decree and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

“(i) Durga (deceased) and others Versus Milkhi Ram and others, 1969 RLR 122;

(ii) Chhote Khan and others Versus Mal Khan and others, 1954 AIR (SC) 575;

(iii) Avtar Singh Versus Kuldeep Singh, 2015(7) R.C.R. (Civil) 790; and

(iv) Gulzara Singh(deceased) through LRs Versus Brij Raj Singh and others, 2016(1) PLR 198.

It is the settled proposition of law that the revenue entries recorded in the record of rights (jamabandis) carry presumption of truth. Appellants-plaintiffs did not rebut the said presumption by leading any evidence. Although, it is true that mutation does not confer title, yet it is equally true that once the title of a party is recorded in the jamabandi, presumption of truth would be attached with the said revenue entry. Under these circumstances, onus was on the plaintiffs-appellants to rebut the

abovesaid presumption but the plaintiffs miserably failed to do so. In this view of the matter, no fault can be found with the findings recorded by the learned first appellate Court and the impugned judgment and decree deserve to be upheld, for this reason as well.

Before arriving at a just conclusion, learned first appellate Court examined, considered and appreciated true facts of the case as well as evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate Court in para 15 and 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“The case pertains to the inheritance of Sohan Singh who died intestate and mutation No.216 has been sanctioned in favour of Kartar Singh and Kartar Kaur regarding his estate. The plaintiffs are laying their claim regarding holding possession of the land in dispute for the last more than 30 years. The plaintiffs are also claiming themselves to be the legal heirs of deceased Sohan Singh, but instead of preferring the suit for declaration they filed a suit for the grant of permanent injunction on the basis of their claim regarding established possession over the property in dispute. If the plaintiffs were claiming themselves to be legal heirs of deceased Sohan Singh then they omitted to file suit for declaration in this regard. On the other hand, the defendants/appellants are legal heirs of Kartar Singh and Kartar Kaur and by way of contest before the revenue authorities Kartar Singh and Kartar Kaur were held to be the legal heirs of said deceased Sohan Singh to inherit his estate. The claim on behalf of Kartar Singh and Kartar Kaur was contested by the opposite party i.e. the plaintiffs, but ultimately, the revenue authorities held Kartar Singh and Kartar Kaur to be the legal heirs of deceased Sohan Singh. So, under these circumstances mutation of inheritance in favour of said Kartar Singh and Kartar Kaur was also

sanctioned and when Kartar Singh and Kartar Kaur have succeeded to the estate of deceased Sohan Singh then being owners they are entitled to the possession of the property in dispute. In these circumstances possession of the plaintiffs over the property in dispute is unauthorized; whereas, legal heirs of Kartar Singh and Kartar Kaur are entitled to the possession of the property in dispute due to the fact that said Kartar Singh and Kartar Kaur were held to have succeeded to the estate of deceased Sohan Singh as per the verdict given by the revenue authorities. The said verdict has never been challenged by the plaintiffs in the present suit by way of seeking declaration to that effect. No doubt, mutation in favour of any person does not confer any title, but at the same time when there is no substantive evidence on behalf of the plaintiffs to dispel the claim of the defendants/Counter Claimants to the effect that Kartar Singh and Kartar Kaur were legal heirs of deceased Sohan Singh, then the plaintiffs' claim regarding holding possession over the property in dispute is not based upon sound foundation, especially when legal heirs of deceased Kartar Singh and Kartar Kaur, who were held to be successors to the estate of deceased Sohan Singh by the revenue authorities, have become owners of the said property in dispute. Attorney holder of the defendants has stepped into the witness box as DW1. He could have been the best person to describe the relationship of Kartar Singh and Kartar Kaur with deceased Sohan Singh as he is one of the legal heirs of Kartar Singh and Kartar Kaur. So, the observation given by the learned lower Court, that he was not able to explain the fact as alleged by the defendants/Counter Claimants seeking possession of the property in dispute, is not based upon sound foundation and calls for interference by this Court, especially when the case of the plaintiffs themselves is without any basis and they are having no title over the property in dispute and even they have not laid their claim regarding their title over the

property in dispute. As per Ex.D6, mutation has not been sanctioned on the basis of the Will dated 12.5.1975 in favour of Balbir Singh predecessor-in-interest of plaintiffs No.4 to 7.

The plea of the learned counsel for the plaintiffs/respondents is that the defendants earlier claimed relationship with the plaintiffs as that of landlord and tenant and due to this reason they could have preferred suit before the revenue authorities, but this plea of the learned counsel for the plaintiffs/respondents would not suffice as the matter regarding relationship of landlord and tenant has not been adjudicated by the revenue Court and ultimately, the defendants, by way of Counter Claim, sought possession of the property in dispute under the garb of their interest on the basis of mutation having been sanctioned in favour of their predecessors, namely, Kartar Singh and Kartar Kaur. The plaintiffs cannot deny title of the defendants over the property in dispute as the revenue authorities are supporting the claim of the defendants/Counter Claimants. On the other hand, the plaintiffs have not produced any document to establish their claim of their title over the property in dispute. Thus, the appeal having been preferred by the appellants/defendants/Counter Claimants is allowed and the said Counter Claimants/defendants are held entitled to the possession of the property in dispute as mentioned in the head note of the plaint and consequently, the suit having been preferred by the plaintiffs/respondents is without any substance and their claim regarding apprehension of dispossession at the hands of the defendants is not sustainable.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the abovesaid findings recorded by the learned first appellate Court. He also could not

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 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 cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeals are 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, both these regular second appeals stand dismissed, however, with no order as to costs.

March 07, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No