

278

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1039 of 2017 (O&M)

Date of Decision : 03.10.2017

MADAN LAL AND ANOTHER

....APPELLANTS

VERSUS

VIJAY KUMAR

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vijay Lath, Advocate for the appellants.

RAMESHWAR SINGH MALIK, JUDGE (ORAL)

Unsuccessful plaintiffs are in Regular Second Appeal, against the concurrent findings of facts recorded by both the learned Courts below, whereby their suit for permanent injunction was dismissed and counter claim of the defendant was decreed by the learned trial Court vide its impugned judgment and decree dated 21.03.2015 and first appeal filed by the plaintiffs was also dismissed by the learned District Judge vide impugned judgment and decree dated 24.10.2016, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by the learned first Appellate Court in para 2 of its impugned judgment are that :-

“Appellants/plaintiffs Madan and another filed suit for permanent injunction against respondent/defendant Vijay Kumar to restrain him from interfering into their peaceful possession, use and occupation of land comprised of Khewat No.3/1, Khatauni No.7, Khasra No.1699/1 min(0-8)

Barani, as entered in the jamabandi for the year 2006-07, situated in village Talwara, HB No.279, Tehsil Nangal, District Rupnagar.

It was inter alia averred that the plaintiffs were in exclusive possession of the property in dispute. They were recorded as Gair Marusi since the time of their father Ram Rakha son of Ralla. He remained in possession of the land under the ownership of the defendant. He died in the year 1990 and after his death the plaintiffs inherited his possessory rights and had constructed a pucca toilet and bathroom towards western-northern corner of the property in dispute. There was a hut (Chhappar) towards northern side. Such property was being used to tether cattle and mangers were also there in it. Water tank was also constructed. The defendant purchased the land from original owner about six years ago prior to filing of this suit. He started threatening the plaintiffs to dispossess them from the suit land forcibly and illegally, for which he had no right. Hence, such suit for permanent injunction.”

Having been put to notice, defendant appeared and filed his contesting written statement taking more than one preliminary objections. He also filed his counter claim for correction of the entries in the revenue record, which were factually incorrect as the same were continuing in favour of a dead person. Replication was filed by the plaintiffs to the written statement 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 in possession over the suit property? OPP

2. *Whether the plaintiffs are entitled to get the relief of permanent injunction as prayed for?*
OPP
3. *Whether the suit is not maintainable? OPD*
4. *Whether the entries in the name of father of plaintiffs in the revenue record relating to suit land is wrong and are liable to be corrected?*
OPD
5. *Whether the defendants are entitled to get relief of declaration as prayed for in the counter claim? OPD*
6. *Whether the plaintiffs have concealed material facts from the Court, if so its effect? OPD*
7. *Relief.”*

Both the parties brought on record their documentary as well as oral evidence, so as to prove their respective stands taken in their pleadings. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiffs have failed to prove their case for want of cogent and convincing evidence. On the other hand, defendant was found to have duly proved his counter claim. Accordingly, suit for permanent injunction filed by the plaintiffs-appellants was dismissed and the counter claim of defendant was decreed by the learned trial Court vide impugned judgment and decree dated 21.03.2015. Plaintiffs felt aggrieved and they filed their first appeal which also came to be dismissed by the learned District Judge vide his impugned judgment and decree dated 24.10.2016. Hence, the regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

Ownership of the defendant-Vijay Kumar has gone undisputed on record. No doubt earlier father of the plaintiffs-appellants was recorded in possession over the suit land. However, it is equally true that late Shri Rakha son of Shri Ralla, father of the plaintiffs died in the year 1990. Even after the death of Shri Rakha, father of the plaintiff-appellants, entry in the column of possession continued in his name. Although, the appellants had an occasion to move an appropriate application before the competent revenue authority to carry out the correction in the revenue record, particularly in the column of cultivation, yet the plaintiffs-appellants did nothing in this regard and that too for no good reasons. 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 deserves to be upheld.

It goes without saying that possession goes with the title. Revenue entry in the case in hand was not only patently illegal but the same was factually incorrect and misreading also. As it was continuing in the name of a dead person even after 20 years of his death, plaintiffs could not have based their claim on the basis of such an absurd entry in the revenue record, which would have no meaning in eyes of law. That is what has been held by both the learned Courts below, while recording their concurrent findings of facts. Under these undisputed circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserves to be upheld for this reason

also.

Before arriving at a judicious conclusion, the learned 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 10 and 11 of its impugned judgment, which deserve to be noticed here, read as under:-

“As per Jamabandi Ex.P3 for the year 2006-07, defendant Vijay Kumar is recorded as owner of the land in dispute measuring 8 Marlas comprised in Khasra No.1699/1min. As per this document name of Ram Rakha father of the plaintiffs is mentioned in the column of possession as Gair Marusi. It is admitted case of the plaintiffs that their father died in the year 1990. Meaning thereby that such entry in the name of Ram Rakha, even after his death, continued till the year 2006-07. Entry in the name of dead person in the column of possession cannot be respected because on the fact of it it is proved to be wrong and therefore, the plaintiffs cannot take benefit of presumption of truth attached to the entry of revenue record because from their own case its correctness has been rebutted. In a case titled “Uttam Singh Vs. Des Raj 1990 (8) Punjab Legal Report and Statues 143 (P&H), it was held that the revenue entries in the name of a person which continues even after his death for a long period cannot be relied upon as the same are palpably wrong and have no evidentiary value whatsoever. Such entries cannot be legally reliable in favour of a person who submitted the same. Although, the plaintiffs have alleged that their

father was in possession as Gair Marusi i.e. tenant at will, but they have remained totally silent regarding rate of rent and date of inception of tenancy. Mere showing the status of father of the plaintiffs as Gair Marusi does not in any manner cloth them with any legal right to be in possession. At the most his possession during his life time can be said to be as a trespasser and now after his death such rights of illegal possession cannot be inherited by the plaintiffs. During his cross examination it was admitted by plaintiff Madan Lal (PW-1) that earlier the property in dispute was owned by Khushi Ram. Khushi Ram was never paid any Chakota or rent by them. He also could not say as to whether his father was making payment of rent or Choata to Khushi Ram.

Admittedly, the land in dispute is not cultivatable and it is shown to be barani. Once, the land is barani, the stand of the plaintiffs of having raised construction over it or that their father was in cultivating possession of it has been disproved. In a case titled "Bhag Singh Vs. Arjan Singh and others", 1982 P.L.J. Page 9, where name of 'A' was mentioned in the column of possession of Khasra Girdawari, but other entries as to nature of crop shown or whether the cultivation was being done, was blank, the presumption was that owner of the land was in possession. The plaintiffs have admitted that the property in dispute is barani and they could not tell the length and breadth of the property. So, keeping in which such circumstances, the learned trial Court rightly held that plaintiffs have failed to prove their possession over the land in dispute and further that the revenue entries made in the Jamabandies

showing Raka son of Ralla as Gair Marusi in regard to the suit property are incorrect and therefore, liable to be corrected in the name of defendant.....”

In case the contention raised on behalf of the appellants is accepted, it would amount imposing of another avoidable and unwarranted round of litigation on the defendant-true owner, particularly when his counter claim has been rightly decreed by both the learned Courts below. Further, unsuccessful plaintiffs-appellants, in the case in hand, will not succeed in the regular second appeal on technicalities alone particularly when the learned Courts below have recorded their concurrent and cogent findings which have been found duly supported by sound reasons. 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 impugned judgments and decrees deserve to be upheld for this reasons as well.

During the course of hearing, learned counsel for the appellants 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 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, 2013 (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 since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. 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

October 03, 2017
rajneesh

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

