

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.3940 of 2014

Date of decision:21.7.2017

Jagbir Singh and another

...Appellants

Versus

Sarafraj Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Veneet Sharma, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendants are in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession filed by the plaintiff was decreed as the appellants-defendants were proved to be trespassers.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that the plaintiff filed a suit for possession by alleging that plot of land as fully detailed in the head note of the plaint was earlier owned by Bhagat Singh, Dalip Singh, Nirranjan Singh, Bhan Singh, Channan Singh sons of Kishan Singh. They mortgaged the same in favour of Narinder Singh and Ajit Singh sons of Bela Singh about 60 years back and delivered possession to mortgagees. Narinder Singh has died and plaintiff being his only son inherited his estate. Ajit Singh also died and Parmdeep Singh inherited his estate. Paramdeep Singh was away to U.S.A. Plaintiff was in actual and physical possession of the plot in dispute. Present suit was being filed for the benefit of Parmadeep

Singh also. Defendants had got no right, title or interest in the suit property. On 10.7.2010, defendants took forcible possession of suit property and raised illegal construction, despite resistance of plaintiff. Previously Surat Singh, alleged legal heir of Bhagat etc. original mortgagor, filed injunction suit against plaintiff but no relief was given to him. Plaintiff and Paramdeep Singh became owners of suit land by lapse of time, as suit property had not been got redeemed by the mortgagors or their legal heirs, plaintiff was entitled to restoration of possession by removal of illegal construction. It was finally prayed that decree for possession by demolition of illegal construction raised by the defendants on land measuring 1 Kanal 10 marla bearing Khata No.811/1685, Khasra No.71//14/1 as per jamabandi for the year 2008-09, situated in village Ajnala be passed.

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 possession of the suit property? OPP.
2. Whether Civil Court has jurisdiction to try the present suit? OPP.
3. Whether plaintiff has no locus standi and cause of action? OPP.
4. Whether suit is bad for mis joinder and non joinder of the parties?OPD.
5. Relief.

With a view to substantiate their respective stands taken, both the

parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has duly proved his case. Accordingly, suit of the plaintiff for possession was decreed by the learned trial court, vide its impugned judgment and decree dated 29.7.2013. 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 24.3.2014. Hence this second appeal at the hands of the defendants

Heard learned counsel for the appellants.

A combined reading of both the impugned judgments and decrees passed by the learned courts below will make it crystal clear that suit for possession, filed by the plaintiff qua the land measuring 1 kanal and 10 marlas, on which the plaintiff and before him his father have been coming in possession as mortgagees for about 60 years, was rightly decreed. The only argument raised by the learned counsel for the appellants that the plaintiff failed to prove himself to be a mortgagee with possession has been found not only contrary to the record but also wholly misplaced, in view of cogent and concurrent findings recorded by both the learned courts below and also as per the own evidence led by the defendants-appellants, particularly their witness DW-3 Bakshish Singh, Lambardar of the village. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It was a matter of record that Bhagat Singh, Dalip Singh,

Niranjan Singh, Bhan Singh and Chanan Singh sons of Kishan Singh mortgaged the suit property in favour of Narinder Singh and Ajit Singh about 60 years back and also delivered the possession thereof. It has been so recorded in the jamabandi immediately before filing the suit. This jamabandi for the year 2008-09 was Ex.P1 and earlier jamabandi for the year 2003-04 was Ex.P2. Even in the khasra girdawari, entries have been shown in the name of mortgagee.

This fact came to be admitted by one of the defendants when he appeared in the witness box as DW-1. Plaintiff was son of Narinder Singh. It was also admitted that plaintiff inherited the entire holding of Narender Singh including this mortgaged property. It was also admitted and not in dispute that at the time of consolidation, the entries were incorporated in the name of Narinder Singh and Ajit Singh-mortgagees. Their names were reflected in the revenue record.

The pleaded and argued case on behalf of the defendants-appellants was that they purchased the suit property, vide sale-deed dated 7.7.2010 to the extent of 1/4th share, i.e. 15 marlas out of total suit land. It is also not disputed by the defendants-appellants that the suit land was previously owned by Bhagat Singh, Dalip Singh, Niranjan Singh, Bhim Singh and Chanan Singh sons of Kishan Singh. They claimed to have purchased the suit land from Karnail Singh and Jagdeep Singh sons of Dalip Singh.

First of all, defendants-appellants cannot claim themselves to be bonafide purchasers because the plaintiff was recorded as mortgagee in the relevant revenue record, which was clear from the revenue entries Exhibits P1 and P2, i.e. jamabandis for the year 2008-09 and 2003-04 as

well as Khasra Girdwari Ex.P3 from 2004 to 2009. It is also pertinent to note here that without getting the land redeemed, vendors of the defendants-appellants were not entitled to execute the sale-deed in favour of the defendants. Even if the defendants purchased the suit land under mortgage, they would be at the most stepping into shoes of their vendors and would become mortgagers. In that situation, the defendants had no right to take forcible possession from the plaintiff, because they were supposed to seek redemption of the suit land. It was also not the case set up by the defendants-appellants that they came in possession of the suit land, in accordance with law. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Presumption of truth is attached with revenue entries, in the present case jamabandis Ex.P1 and Ex.P2. This statutory presumption is as per the provisions of Section 44 of the Punjab Land Revenue Act, 1887 ('the Act' for short). Entries of jamabandis fall within the purview of record of rights under Section 31 of the Act. It was so held by the Hon'ble Supreme Court as far back as in 1954 in the case of **Chhote Hasan and others Vs. Mal Khan and others, 1954 AIR (SC) 575.**

The view taken by the Hon'ble Supreme Court in **Chhote Hasan's** case (supra) has been consistently followed in later judgments and there has been found no deviation nor any such deviation has been sought to be raised by the learned counsel for the appellants before this court, referring to any contrary judgments. It was followed by this Court as well in its recent judgment in **Gulzara Singh (deceased) through LRs Vs. Brij**

Raj Singh and others, 2016(1) PLR 198 that jamabandis carry presumption of truth. No doubt, such presumption of truth would always be rebuttable but in the case in hand, defendants-appellants made no efforts to rebut the above-said statutory provisions in favour of the plaintiff. In such a situation, the appellants were bound to fail. That is what has been held by both the learned courts below.

So far as the illegal and forcible dispossession of the plaintiff, at the hands of the defendants-appellants was concerned, own witness of the defendants DW-3 Bakshish Singh son of Roor Singh, Nambardar of the village, admitted in his cross-examination that plaintiff was in possession of the suit property till 10.7.2010. Relevant part of the cross-examination of DW-3 Bakshish Singh, available at page 79 of the lower court record, reads as under:-

“I knew Narinder Singh and Ajit Singh Shah. Narinder Singh died about 25 years back and Ajit Singh Shah died about 15 years back. It is correct that the estate of Narinder Singh including onwership and mortgage was inherited by plaintiff Sarfraj Singh. I do not know if the plot in dipsute was mortgage by Bhagat Singh etc. in favour of Narinder Singh and Ajit Singh about 60 years back. It is correct that upto 10.7.2010 plaintiff Sarfraj Singh was in possession of the suit property. It is incorrect to suggest that Pritam Kaur etc. were not competent to execute any document in favour of the defendants unless the land was redeemed. I do not know if the defendants have taken forcible possession from the plaintiff. It is incorrect to suggest that I deposed falsely.”

Learned counsel for the appellants wanted this court to read into the above-said statement of DW-3 Bakshish Singh that it was incorrect that up to 10.7.2010 plaintiff was in possession of the suit property.

Contention raised by the learned counsel for the appellants in this regard has not been found worth acceptance because the same does not appeal to reason at all.

It was also one of the issues raised before the learned courts below that since the suit was filed by one of the co-sharers, it was bad for non-joinder of other co-sharers. This contention raised on behalf of the appellants was rightly rejected by the learned courts below because the defendants-appellants have been found as rank trespassers over the suit land. A trespasser is nobody to claim that all co-owners must join in the suit before he can be ejected from the suit property. He would have no such right. Suit for possession against the trespasser by one of the co-sharers would be very much maintainable because such a decree for possession obtained by one co-sharer would enure for the benefit of all the joint owners. In this regard, reliance can be placed on two judgments of this Court in **Tarsem Kaur Vs. Mehar Singh and another, 1980 PLR 631** and **Sardara Singh Vs. Dilbagh Singh, 1997 (1) RCR (C) 159**. The moment plaintiff was forcibly and illegally dispossessed by the defendants-appellants, he immediately filed the suit for possession on 17.7.2010, without wasting any time.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“Suit property is 1 Kanak 10 marla comprised in khata No.811//1685, Khasra No.71//14/1 situated in Village Ajnala,

Tehsil Ajnala, District Amritsar. Jamabandi for the year 2008-09 (Ex.P1) shows that Bhagat Singh, Dalip Singh, Niranjana Singh, Bhan Singh and Chanan Singh sons of Kishan Singh are recorded to be owners of this suit property and they have further mortgaged it in favour of Narinder Singh and Ajit Singh sons of Bela Singh. Possession of mortgagee i.e. Narinder Singh and Ajit Singh is also recorded in it. Possession of mortgagee is further recorded in khasra girdawari from Souni, 2004 to Hari 2009. In jamabandi Ex.p1, mutation No.11633 of Dalip Singh owner is shown to be sanctioned in favour of Karnail Singh and Jagdeep Singh. Similarly mutation of inheritance of Bhagat Singh is shown to be sanctioned in favour of his daughter Pritam Kaur. From Karnail, Jagdeep Singh and Pritam Kaur defendants claimed to have purchased ½ share of the suit property vide sale deed dated 7.7.2010. It is however claim of the defendants that they got possession of the suit property, from their vendors. It is further to be noted that when Dalip Singh or Bhagat Singh co owners of the suit property were not in possession thereof, question of their legal heirs Karnail Singh, Jagdeep Singh and Pritam Kaur being in possession of the same and having further delivered possession to their vendees i.e. defendants does not arise. It shows that after purchase of ½ share of the suit property on 7.7.2010, defendants, took forcible possession from the plaintiff. This fact stands further proved from the admission of DW.3 Bakshish Singh. In cross-examination, he admitted that estate of Narinder Singh was inherited by plaintiff Sarfaraj Singh. He further admitted that up to 10.7.2010, plaintiff Sarfaraj Singh was in possession of suit property. He further stated that he does not know that defendants have taken forcible possession from the plaintiff. So, this admission of Bakshish Singh DW.3, witness of defendants further clinches matter in favour of plaintiff, that he being son of mortgagee Narinder Singh was in possession of suit property and was forcibly dispossessed therefrom on

10.7.2010 by defendants as they had purchased ½ share of the suit property on 7.7.2010. Remedy with defendants, after purchase of suit property, was to get it redeemed from plaintiff and others, if so permitted under law. Defendants could not take forcible possession from plaintiff after purchase of land and without getting same redeemed. So they are duty bound to deliver/restore possession of suit property to the plaintiff. If they have raised any construction in the suit property, same also deserves to be demolished. Learned trial Court has rightly decided issued No.1 in favour of plaintiff and against the defendants. Plaintiff has got locus standi and cause of action to file suit. Civil Court has every jurisdiction to try the present suit for possession of land from which plaintiff was forcible dispossessed and there was no need to array other owners of land in the present suit as party as defendants had taken possession thereof forcibly from the plaintiff. So findings of the learned trial court on all these issues are hereby affirmed. Impugned judgment is legal and valid and is based on proper appreciation of evidence and law and does not call for any interference and same is hereby affirmed.”

In fact, immediately after the alleged sale-deed in favour of the defendants-appellants, they took the law in their own hands and forcibly dispossessed the plaintiff. Although, the defendants-appellants claimed themselves to be purchasers of the suit property, yet neither they could establish on record the competence of their vendor to execute the sale-deed nor they could prove themselves to be the bonafide purchasers. In such a situation, no fault can be found with the concurrent findings recorded by both the learned courts below, in recording the defendants-appellants to be trespassers over the suit property. Thus, neither the law nor equity is in favour of the appellants. Suit of the plaintiff was rightly decreed by both the learned courts below. In this regard, reliance can be placed on a

judgment of this Court in **Akhtar & others Vs. Israil and another, 2012**

(4) PLR 797.

During the course of arguments, learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

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

21.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No