

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 04.10.2017****RSA No.4195 of 2014 (O&M)**

Mahavir Dass @ Moti Ram & others

...Appellants

Vs.

Onkar Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Ravi Malik, Advocate, for
Mr. S.K.Panwar, Advocate, for the appellants.**RAJIV NARAIN RAINA, J. (ORAL)**

1. The only *Jamabandi* that plaintiffs, the present appellants, could rely on to show that they were owners in possession of the suit land was of the year 1975-76 (Ex.P1). But in this *Jamabandi* in the column of cultivation, the names of the defendants and their predecessors-in-interest occur as *gair marusian doyam*, which means a second preferential right over the suit land. The first being unknown persons, who may have superior rights over and above the plaintiffs and the defendants.

2. The plaintiffs are in second appeal in a suit for declaration and possession of temple land brought by them while claiming their fathers to be Pujaries of the temple in cultivating possession of the agricultural land adjoining the temple, the antiquity of which temple is not known from the facts on file. The Courts below have noticed that the basic fact was not pleaded i.e. as to when did plaintiffs' father or forefathers come into possession of the disputed property. Neither is it pleaded as to when their father died and when they succeeded to his interest and in what manner.

Admittedly, the *Jamabandi* beyond the year 1975-76 reflect the names of the defendants and on the hand there is singular absence of the names of the plaintiffs in the revenue record of rights. The Courts accordingly below concluded that there was nothing produced on file, which can be considered relevant to show that prior to the *Jamabandi* for the year 1975-76, there were other entries exclusively in the name of the plaintiffs and which were subsequently changed in favour of the defendants.

3. In the revenue record, the Mandir (temple) is recorded as *Dholidar*, and therefore, the possession of the plaintiffs could only be on behalf of the Manager and the revenue entry Ex.P-1 suggests that one Har Narain was the Manager of the temple complex. When this was the factual position obtaining, then the reasoning of the Courts below in dismissing the suit is not open to suspicion or the observation that the burden was on the plaintiffs to have led evidence to show that they got into possession as a licensee with the consent of the Manager on behalf of the Mandir (temple).

4. Mere depositions of two witnesses brought to the witness box by the plaintiffs were not sufficient to conclude title to suit property in their favour. Nothing meaningful was shown on file that any attempt was made to get the *Jamabandies* post 1975-76 corrected at the hands of the revenue authorities by the plaintiffs. In the suit where the entries were challenged to be falsely recorded, then there should have been available the best and unimpeachable evidence to rebut the presumption of correctness attached to the revenue entries in the normal course of business.

5. The plaintiffs have failed to prove their exclusive possession on the suit land in any capacity other than as reflected in the records of rights for a stray year. No other material was placed on record in the admissible

evidence to obtain a decree binding on the defendants. Since the plaintiffs failed to prove their case by production of legal evidence, no interference is called for in this appeal, which is ordered to stand dismissed, as no substantial question of law arises for consideration.

04.10.2017

Vimal

**[RAJIV NARAIN RAINA]
JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*