

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

RSA No.1817 of 2017 O&M)

Date of decision: 20.11.2017

Jag Ram and another

.....Appellants

Versus

Jai Bhagwan and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.S. Malik, Advocate,
for the appellants.

Ritu Bahri, J.

This appeal has been directed against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Civil Judge (Junior Division), Bahadurgarh and the Additional District Judge, Jhajjar, whereby suit filed by the plaintiffs-appellants for declaration under Section 45 of Punjab Land Revenue Act, 1887 with consequential relief of permanent injunction, has been dismissed.

Plaintiffs (appellants and respondent Nos.3 to 8 herein) filed the aforesaid suit for declaration and permanent injunction to the effect that they are descendants of late Ramji Lal and Nandu. Their ancestors namely Mahiya, Dhanna and Nandu were in cultivating possession of land comprised in khewat no. 85/93, khatoni no. 116, Rectangle no. 23, killa no. 4 (7-9), 5 (2-18), 6(8-0), 7(8-0), 14 (7-7), 15 (7-7), Rectangle no. 24, Killa no. 12 (8-11), 13 (3-16), 17 (6-13), 18/1(5-4), kitta 12 land measuring 78 Kanal 1 Marlas, situated in the revenue estate of village Mahmudpur Majra, Tehsil Bahadurgarh, District Jhajjar. The ancestors of plaintiffs (appellants) used to pay *lagan* to the tune of Rs.250/- per annum qua the entire land and

entry, in this regard, has been incorporated in the revenue record i.e.

Jamabandi for the year 1959, 1963-64, 1965-66. It was further stated that the lagan has been reduced from Rs.250/- to Rs.200/- as mentioned in the jamabandi for the year 1970-71, 1975-76 and 1980-81. The ancestors of the plaintiffs namely Mahiya, Dhanna and Nandu died and tenancy of said land had been inherited by their legal heirs by way of succession and now plaintiffs are in cultivating possession of the said land as "Gair Mourasian" being the descendants of late Mahiya, Dhanna and Nandu Kallu. Being Sarpanch of Gram Panchayat, village Mahmudpur Majra, defendant no.1 fraudulently, illegally and in collusion with the revenue officials, got partitioned and changed the revenue record qua possession of agricultural land comprised in khewat no.101/95, khatoni no.122, Rectangle no.23, killa no.4 (7-9), 5 (2-18), 6 (8-0), 7 (8-0), 14 (7-7), 15 (7-7), Rectangle no.24, killa no.10 (5-9), kitte 7, land measuring 46 Kanal 10 Marla and got prepared a separate khewat no.101/9, khatoni no.123, Rectangle no.24, killa no.11/1/2(0-8), 11/1/11(0-10), 11/1/12(0-3), 11/1/13(0-3), 11/1/14(0-3), 11/1/15(0-3), 11/1/16(0-3), 11/1/17(0-3), 11/1/18(0-3), 11/1/19(0-13), 11/1/20(0-7), 12(8-11), 13(3-16), 17(6-13), 18/1(5-4), kitte 15 land measuring 27 kanal 3 Marlas, situated in the revenue estate of village Mahmudpur, Tehsil Bahadurgarh, District Jhajjar. It was further stated that defendant No.1 fraudulently and by illegal means, got partitioned khewat no.101 without any order passed by any court and also without giving any notice or opportunity of hearing to the plaintiffs. Defendant no.1 also wrongly got entered his name and deleted the name of plaintiffs from the column of possession in the jamabandi for the year 1990-91 in respect of the suit land mentioned in khewat no.101 min/95, khatoni no.122, Rectangle no.23, killa no.4 (7-9), 5 (2-18), 6 (8-0), 7 (8-0), 14 (7-7), 15 (7-7),

Marlas, situated within the revenue estate of village Mahmudpur Majra, Tehsil Bahadurgarh, District Jhajjar. It was further stated that entries qua possession, which were got entered in the name of defendant No.1 in place of plaintiffs in the revenue record, are illegal, null & void and not binding upon the rights of the plaintiffs on the ground that no order has been passed by any court for changing the name of defendant in place of plaintiffs in the column of possession in the jamabandi for the year 1990-91. The plaintiffs had never surrendered their possession qua the suit land. No rapat roznamcha entry was made while changing the entry in jamabandi of the year 1990-91 qua the possession. Moreover, the plaintiffs were never called by the Halqua Patwari, Giradwar or Circle Officer while making the change in the entry of revenue record. It was stated that the plaintiffs had asked the defendants to get corrected the revenue record, but the defendants (respondents) refused to do so. Hence, the suit.

Upon notice, defendant No.2 filed written statement taking preliminary objections with regard to suppression of material facts, cause of action, estoppel, locus-standi, non-joinder and mis-joinder of necessary parties etc. On merits, it was stated that from the very inception Gram Panchayat M.P. Majra used to allot land on *Pattedari* in an open auction after every two years and entry in the name of plaintiffs' ancestors was wrong, false and fictitious. It is further stated that the ancestors of the plaintiffs were very clever and got entered their names in collusion with revenue officials. In fact, neither Mahiya, Dhanna and Nandu ever cultivated the land in dispute nor were in possession thereof. The entry was shown due to conspiracy hatched by the plaintiffs. It was further averred that plaintiffs had never paid any *lagan* or rent to the Panchayat and now they

contrary to law. I was denied that plaintiffs had ever cultivated the land in question. Moreover, they were not in possession of the same. It was also averred that the land in question was only source of income of Defendant No.2 and this income had always been used for the benefit of inhabitants of village M.P. Majra. However, the plaintiffs wanted to grab the money of the Panchayat on the basis of those wrong entries. It was further stated that defendant No.2 leased out the land in question every two years in an open auction. The entries have rightly been changed in the name of defendant No.2. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Replication to the written statement of defendant No.2 was filed.

On the pleadings of the parties, following issues were framed by the trial court:

1. Whether the plaintiffs are entitled to the decree of declaration as prayed for? OPP
2. Whether the plaintiffs have not come to the court with clean hands and have suppressed the material facts from the court? OPD
3. Whether the suit of plaintiffs do not disclose any cause of action? OPD
4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
5. Whether the plaintiffs have no locus-standi to file the present suit? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD

7. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

While dismissing the appeal, learned lower Appellate Court has observed that no evidence was led by plaintiffs (appellants) to show that Mahiya, Dhana and Nandu were their ancestors. They did not place on record any pedigree table, so as to connect themselves with them. Further no evidence was led by them to show that Gram Panchayat had inducted their ancestors as tenants over the disputed land. Although in the Jamabandi for the years 1963-64 Ex.P1 and 1965-66 Ex.P2, it was recorded that amount of Rs.250/- per annum was the rent, but in the Jamabandi for the years 1970-71 Ex.P3, 1975-66 Ex.P4 and 1980-81 Ex.P5, it was recorded that the rate of rent was Rs.200/-. Column No.9 in the Jamabandi for the year 1985-66, Ex.P6, stood blank. Similarly, in the Jamabandi for the years 1990-91, Ex.P7, 1995-96, Ex.P9, and 2005-06, Ex.P14, there is no entry of any rent. At the same time, in the Jamabandi for the year 1990-91, Ex.P8, name of defendant No.1-Jai Bhagwan has been entered as tenant, which continued for the years 1995-96, Ex.P10, 2000-01, Ex.P12. It was observed that entries in the revenue record for the years 1963-64 to 1985-86 were continuing in the names of the persons, who might have died. However, plaintiffs did not make any effort during all these years to get the entries corrected in their favour. No objection was raised by the plaintiffs against the name of defendant No.1, whose name stood entered in the revenue record since 1990-91, in place of aforesaid Mahiya, Dhanna and Nandu.

Defendants (respondents herein), at the same time, produced copies of *patta* register, Ex.D2 to Ex.D22, which showed that the disputed property was leased out to different persons in different years and

Bhagwan-defendant No.1 appeared in the witness box as DW-2 and deposed that he was Sarpanch in the year 1990-91. He stated that it was the Gram Panchayat, who was leasing out the land to different persons from time to time. Surat Singh (DW-3) and Shri Chand (DW-4) also supported the case of the defendants and stated that Gram Panchayat had leased out the land to them. Their testimony stood corroborated from the copies of *patta* register, Ex.D2 to Ex.D22. These entries have been proved by Mukesh (DW-1).

Plaintiff-appellants have failed to establish that they had inherited tenancy rights of their ancestors. Keeping in view copies of *patta* register, Ex.D2 to Ex.D22, the land in dispute was shown to have leased out by the Gram Panchayat to *pattedars* and this fact has been duly proved by the deposition of Mukesh (DW-1), Jai Bhagwan-defendant No.1 (DW-2), Surat Singh (DW-3) and Shri Chand (DW-4). Since the plaintiffs have failed to prove that they were in possession or they had paid any rent, their suit for declaration and permanent injunction has rightly been dismissed by both the Courts below. It stood durly proved that Gram Panchayat had been leasing out the suit land to the *pattedars*.

Hence, after going through the impugned judgments passed by the Courts below, no illegality, much less perversity, has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

20.11.2017

ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No