

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

**RSA No.4069 of 2017 (O&M)
Date of decision: 28.08.2017**

Gurmit Singh and others

... Appellants

Vs.

Gurdeep Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Kulwant Kaur Kahlon, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (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 declaration to the effect that they were in actual, cultivating and physical possession of the suit land with consequential relief of permanent injunction, was dismissed by the learned trial Court vide its impugned judgment and decree dated 30.07.2016 and their first appeal was also dismissed by the learned District Judge vide impugned judgment and decree dated 12.12.2016, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of the impugned judgment, are that plaintiffs Gurmit Singh, Jajj

Singh and Baldev Singh had sought declaration to the effect that they were in cultivating possession of the suit land fully described in the head note of the plaint. It was their case that earlier their father and forefathers were cultivating the suit land and they were in possession. It was also added that the suit land was the ownership of Punjab Rehabilitation Department. Their father Mohinder Singh had died and they had stepped into his shoes, therefore, they were in possession of the suit land.

The suit was initially contested by the defendant on the grounds, inter-alia, that deceased Mohinder Singh was in possession of land measuring 24 kanals 17 marlas, but he had delivered the possession to Mohan Singh father of defendant after receiving Rs.3,10,625/- on 22.03.1995 and at that time, a writing was executed. Thus, the defendant had become the exclusive owner and in cultivating possession of the suit land. He had paid the lagaan to the Government of Punjab.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether plaintiff is entitled to the relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
3. Whether plaintiffs have no locus standi to file the present suit? OPD
4. Whether suit of the plaintiff is not maintainable in the present

form? OPD

5. Whether plaintiffs are barred by their own act and conduct? OPD
6. Relief.

Both the parties brought on record their documentary as well as oral evidence, in support of their respective pleaded stands. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have failed to prove their case for want of cogent and sufficient evidence. Accordingly, their suit for declaration to the effect that the plaintiffs were in actual physical possession of the suit land with consequential relief of permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 30.07.2016. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned District Judge vide impugned judgment and decree dated 12.12.2016. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

At the very outset, learned counsel for the appellants has fairly conceded that the suit land was the ownership of Central Govt. It is also a matter of record that the true owner of the suit land was not one of the impleaded parties-defendant. Further, it was defendant Gurdeep Singh, who was recorded in the cultivating possession as gair marushi (tenant at will) over the suit land as per the relevant revenue record i.e. jamabandi for the year 2007-2008 Ex.P9. As per the provisions contained in Section 44 of the Punjab Land Revenue Act, presumption of truth attaches to the revenue entries.

Although such a presumption would always be rebuttable, but the

plaintiffs-appellants failed to rebut the said statutory presumption. In such a situation, plaintiffs were bound to fail. That is what has been held by both the learned Courts below. 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 deserve to be upheld.

Before arriving at his judicious conclusion, learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in paras 11 to 16 of the impugned judgment, which deserve to be noticed here, read as under: -

“In this case, the plaintiff/appellant has to prove independently his possession. In the Jamabandi for the year 1992-93 (Ex.P1), the property in dispute is shown as ownership of Teja Singh son of Bikar Singh son of Devi Chand; Sohan Singh son of Ujagar Singh son of Devi Chand residents of Village Khokhewal to the extent of 7/73 shares and Punjab Govt. (Rehabilitation Department) to the extent of 66/73 shares. However, the Punjab Govt. (Rehabilitation Department) has not been impleaded as a party in this case. In jamabandi Ex.P1, Mohinder Singh son of Hakam Singh is recorded as gair-marusi being in illegal possession. However, it is mentioned in column no.9 of the said jamabandi that he is paying rent (lagaan) at the rate of Rs.250/- per acre.

Ex.P2 is the khasra girdawri which transpires that in harhi 2006, girdawri was conducted in the name of Mohan Singh.

Jamabandi for Sauni 2004 was conducted in the name of Gurdip Singh son of Sohan Singh being gair marusi. Similar is the position in the jamabandi Ex.P3. In jamabandi for the year 2007-2008 (Ex.P9) in column no.4 which relates to cultivating, Punjab Government (Rehabilitation Department) through Gurdeep Singh son of Mohan Singh is shown in cultivating possession being gair-marusi of the land bearing khasra No.8 min (4-0), 68 min (6-0), 69 min (6-0) total 16 kanals. Similar is the position with regard to land bearing khasra No.58/2 min (4-2) and 64/1(4-15). The remaining jamabandis and khasra girdawaris produced on the record also prove the possession of said Gurdeep Singh. Ex.D1 is the report dated 28.08.2009 whereby Sub Divisional Magistrate Phillaur visited the spot in the presence of Tehsildar (M)-cum Sales Officer, Phillaur whereby he has testified that Gurdeep Singh son of Mohan Singh is in possession of land bearing khasra Nos.8 min (4-0), 58/2 min (4-2), 64/1 (4-15), 68 min (6-0), 69(6-0) total 24 kanals 17 marlas. Similar are the reports Ex.D2 and Ex.D5 to Ex.D8.

The instant suit which culminated into impugned judgment and decree has been filed on 23.11.2012 but at that time jamabandi for the year 2007-2008 (Ex.P9) was in force and Gurdeep Singh is shown to be in possession of the suit land. Similar is the khasra girdawri.

The plaintiff wants to take the benefit of khasra girdawri in the name of a dead person namely Mohinder Singh. But

presumption of truth is attached to jamabandi entries which depicts the possession of Gurdeep Singh. The same cannot be rebutted by oral evidence adduced by the plaintiff.

The learned counsel for the plaintiffs has submitted that earlier the land was allotted in the name of Gurdeep Singh son of Mohan Singh but the same has been set aside vide order Ex.P11 by Sub Divisional Magistrate cum Sales Commissioner Phillaur. This court has considered this contention. Vide order Ex.P11, allotment and conveyance deed in favour of Mohinder Singh was set aside. But the plaintiffs have failed to prove their possession over the suit property and they have also failed to rebut the presumption of truth attached to jamabandi Ex.P9. As such, the plaintiffs have failed to prove their possession.

On independent appraisal of evidence on the record, this court reaches to the conclusion that the findings of the learned trial court are based on proper appreciation of evidence and they do not call for interference and the same are hereby affirmed.”

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that the plaintiffs-appellants miserably failed to prove their pleaded case for want of cogent and sufficient evidence. Appellants, being the plaintiffs, onus was on them to prove their case by bringing on record the cogent and convincing evidence, however, they failed to do so. When learned counsel for the appellants was confronted as to why the true owner was not impleaded as one of the party-defendant, she had no answer and rightly so, it being a matter of

record. Under these undisputed facts and 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 deserve to be upheld, for this reason also.

There was ample documentary as well as oral evidence available on record to show that it was defendant Gurdeep Singh who was in actual, cultivating and physical possession over the suit land. Apart from the relevant revenue record, there was a report dated 28.08.2009 Ex.D1 of Sub Divisional Magistrate who visited the spot and found that it was defendant Gurdeep Singh who was in possession of the suit land. Similar were the reports Ex.D2, Ex.D5 to Ex.D8. 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 reason as well.

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. She also failed to raise any question of law, much less substantial question of law, 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

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

28.08.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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