

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

**RSA No.478 of 1987 (O&M)
Date of decision: 04.07.2018**

Prem Singh

.....Appellant

Versus

Ram Dhari and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Jain, Advocate,
for the appellant.

None for the respondents.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 14.10.1986 passed by the Additional District Judge, Rohtak, whereby appeal filed by defendant-respondents (hereinafter referred to as 'the defendants') against the judgment and decree dated 04.09.1985 passed by the Sub Judge Ist Class, Rohtak, has been allowed and suit filed by plaintiff-appellant (hereinafter referred to as 'the plaintiff') has been dismissed.

Prem Singh-plaintiff (appellant herein) filed a suit for permanent injunction alleging that he had been in cultivating possession of the suit land comprised in Khasra No.1376, measuring 12 biswas *pukhta*, situated in Mauza Rohtak, as an occupancy tenant without payment of any lagaan to the owners of the land. Therefore, he has become owner of the suit land as per the provisions of occupancy law. It was further alleged that defendants claiming themselves to be owners of the suit land by way of purchase, had threatened to dispossess the plaintiff from the suit land without due course

of law. Hence, the suit.

Upon notice, defendants (respondents) filed written statement, wherein it has been pleaded that plaintiff was neither occupancy tenant nor in possession of Khasra No.1376. He had not occupied any ownership rights over the suit land. It was further submitted that the defendants had purchased the suit land from Bishan Sarup and others proprietors with *shamlat* rights for a consideration of Rs.3420/- vide registered sale deed dated 30.11.1972. After purchase, they had become owners of the suit land. They were *bonafide* purchasers for consideration of the suit land without notice of the alleged rights of the plaintiff. Thereafter, they had received compensation in respect of three biswas of land, out of the suit land, which acquired in 1972-73. Earlier, the suit land was *banjar kadim*. After purchase, the defendants had started irrigating the suit land through a tubewell installed in Khasra No.1377. They had also constructed a godown, measuring 125' x 25' in a portion of the suit land and the same was on lease with the irrigation authorities. They had spent a huge amount in construction of godown, installation of tubewell etc. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the plaintiff is in cultivating possession of land bearing Khasra No.1376 in Mauza Rohtak as occupancy tenant? OPP
2. Whether the defendants are bonafide purchasers for consideration for Rs.3420/- vide registered sale deed dated 30.11.1972. If so, to what effect? OPD
3. Whether the defendants have made any improvement and construction in the suit property, if so, to what effect? OPD

4. Whether the suit is not maintainable? OPD
5. Relief.

Trial Court, after hearing learned counsel for the parties, partly decreed the suit and the defendants were restrained from interfering in the possession of the plaintiff over 8 biswas pukhta of land out of the suit land, detailed in para No.1 of the plaint, which was given separate Khasra No.1376/3. However, the plaintiff was not held entitled to the relief of injunction in respect of 3 Biswas *pukhta* of land out of the suit land which had been given a separate Khasra No.1376/2 because the said land was in possession of P.W.D. (B&R) on account of acquisition. Plaintiff was also not held entitled to the relief of injunction in respect of 01 Biswa *Pukhtat* of the land out of the suit land because the godown of the defendants had been existing over the said piece of land and the same was given separate Khasra No.1376/1. On appeal, the lower appellate Court reversed the findings of the trial Court and dismissed the suit of the plaintiff.

While decreeing the suit, trial Court had observed that out of 12 Biswas in Khasra No.1376/2, the Haryana Government acquired 03 Biswas of land and possession of PWD (B&R) Department was recorded in all the khasra numbers. 03 Biswas of land had been given a separate Khasra No.1376/2. The plaintiff was held to be in possession of the remaining land of 08 Biswas, which was given a separate Khasra No.1376/3. As per Khasra Girdawris pertaining to Kharif 1971 to Rabi 1976 Ex.P3, Kharif 1976 to Rabi 1981 Ex.P4, Kharif 1981 to Rabi 1982 Ex.P5, Kharif 1983 Ex.P7 and Kharif 1981 to Rabi 1983 Ex.P8, plaintiff had been recorded in possession of 08 Biswas *pukhta* out of the suit land. As per Jamabandis for the year 1967-68 Ex.P1 and 1972-73 Ex.P2, plaintiff has been recorded to

In Ex.P1, Smt. Kailash Devi, Bishan Sarup etc. were recorded to be owners of the sit land and in Ex.P2, the defendants have been recorded as owners of the suit land. Defendants had examined Niranjana Dass (DW-2), who stated that in the year 1965, the Consolidation Authorities had recorded the entries in favour of the plaintiff. Since, defendants became owners of the suit and by way of sale deed, they could not challenge the entry made in the year 1965 by the Consolidation Authorities. On the other hand, Jamabandi for the year 1967-68 Ex.P1 reflected that the plaintiff was in possession of the suit land. With regard to the fact that the defendants had constructed a godown over 01 Biswa of land in the year 1977-78, the Court observed that this would not be sufficient to hold that the plaintiff was not in possession of the suit land. Even, a report dated 04.12.1972 given by Sh. Jagmal Singh, Tehsildar, did not carry any evidentiary value because he inspected the spot when the civil suit was already pending between the parties. Therefore, it was the civil court who had to give findings on the basis of evidence on record. On the basis of above evidence, suit of the plaintiff was partly decreed in the above terms.

On appeal, lower appellate Court re-examined the entire evidence and held that out of 12 Biswas of land, initially 03 Biswas were acquired by the Government and this land was given separate khasra number i.e. Khasra No. 1376/2. On 01 Biswa of land, a godown was constructed by the defendants in the year 1977-78, which remained on lease with the Irrigation Department and the same was got vacated in the 1979. Defendants have claimed that this godown was constructed by them. Hence, out of 12 Biswas, plaintiffs were held not to be in possession of 04 Biswas of land.

With regard to remaining 08 Biswas of land, as per report dated 04.12.1982

given by Jagmal Singh, Assistant Collector, Ist Grade, Rohtak, after conducting spot inspection, land shown in Khara No.1376/1, measuring 04 Biswas was found as *banjar* at the spot. This spot inspection was carried out during the pendency of the application dated 05.12.1980 made by the defendants for correction of Khasra numbers. Hence, as per this report, if 04 Biswas of land was found to be *banjar*, plaintiff's case that he was cultivating 08 Biswas of land, as reflected in Khasra Girdawaris for Kharif 1974 to Rabi 1975 Ex.P3 and Kharif 1981 to Rabi 1986 Ex.P5, has to be discarded. Out of 08 Biswas of land, if 04 Biswas were *banjar*, it could not be reflected as 'chahi' in the above said jamabandis and khasra girdawaris. Hence, these Jamabandis and Khasra Girdawaris were not correctly recorded. However, these were made the basis for decreeing the suit of plaintiff by the trial Court.

Proceeding from this stage, lower appellate Court observed that the suit filed by the plaintiff for permanent injunction showing himself to be in possession of 12 Biswas of land, was not maintainable because out of this land, 03 Biswas had been acquired by the Government and this land was given new Khasra No.1376/2. On 01 Biswa of land, a godown was constructed in the year 1977-78, which was given on lease to Irrigation Department. Moreover, as per report given by Jagmal Singh, Assistant Collector, Ist Grade (DW-1), 04 Biswas of land was found *banjar* and it was given separate Khasra No.1376/1. Hence, out of 12 Biswas of land, 08 Biswas of land was not in possession of the plaintiff and his possession, as per Jamabandis Ex.P3 to Ex.P5 on 12 Biswas of land, could not be made out. As per aforesaid Jamabandis, 08 Biswas of land was not in his possession. Hence, the revenue entries could not be made the basis for

decreeing the suit of the plaintiff. Ultimately, the appeal was accepted and suit of the plaintiff has been dismissed.

Since plaintiff was not in possession, an application for correction of Khasra Girdawaris was rightly filed by the defendants on 05.12.1980, as they were in possession of the suit property. After going through the impugned judgment, this Court is of the view that the plaintiff-appellant has failed to prove that he was in possession of the suit land, measuring 12 Biswas. The revenue entries had not been correctly recorded in this case. At the same time, the defendants had purchased the suit land vide registered sale deed dated 30.11.1972 for consideration of Rs.3420/- and thereafter, they had constructed a godown on 01 Biswa of land. Moreover, they had accepted the compensation from Government of Haryana, as some part of the land was acquired in the acquisition proceedings. Hence, no illegality, much less perversity, has been found in the impugned judgment passed by lower appellate Court, warranting interference by this Court. The evidence has been appreciated in the right perspective.

Resultantly, finding no merits, the present appeal is dismissed.

04.07.2018
ajp

(RITU BAHRI)
JUDGE

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