

343

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

**RSA No. 2064 of 1990 (O&M)
Decided on: 23.04.2018**

Shankar (Deceased) through LRs**.....Appellants**

versus

Siri Ram and others**.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Rozer Kumar Aggarwal, Advocate &
Mr. Vikas Singh, Advocate
for the appellants.

Mr. S.N.Pillania, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

1. This is the second appeal filed by unsuccessful defendants against concurrent judgments and decrees passed by the Courts below.
2. For convenience, the parties would be referred herein as the plaintiffs and the defendants; as they were described in the original suit.
3. The brief facts of the case are that the plaintiff/respondent No. 1 herein had filed a suit for permanent injunction against the defendants for restraining the latter from interfering in the peaceful possession of the plaintiff over the suit land measuring 12 Kanals comprised in Khasra No. 100/3/2(4-0), 8 (8-0) situated in Village Dhana Tehsil Hansi District Hissar. It was pleaded in the suit that the father of the plaintiff-Naurang had been cultivating the suit land for the last 25-30 years as tenant-*Gair Marusi* under Raja Harinder Singh. Earlier the father of the plaintiff had been recorded in the revenue record in his capacity as tenant. Thereafter, the entries since the crop of Rabi 1983 are in the name of plaintiff himself. However, some entries of *Khasra Girdwari* for the crop of

kharrif 1981-82 were wrongly entered in favour of the defendant No. 2, regarding which an order of correction of *khasra Girdawari* had already been passed by the Tehsildar; on the application moved by the plaintiff. However, on the basis of those stray entries, which now even stand corrected in the name of plaintiff, the defendant wanted to dispossess the plaintiff. Hence, the present suit for injunction was filed.

4. On being put to notice, Raja Harinder Singh, defendant No. 5 filed written statement through his general power of attorney holder Captain Kehar Singh and admitted the plea of the plaintiffs regarding the cultivation of the suit land in his capacity as *Gair Marusi* . He also admitted that the entry in favour of defendant No. 2 was stray entry. However, defendant No. 2 contested the suit by filing separate written statement. Routine preliminary objections were taken by defendant No. 2. On merits, it was pleaded that the defendant No. 2 has been held to be in possession of the suit land in another suit decided on 10.03.1983. It was further pleaded that the plaintiff was not in possession of the suit land. In fact, defendant No. 2 has been cultivating the suit land; besides the other agricultural land; by including which the total holding under his possession becomes 47 Kanals. The defendant No. 2, is the tenant in possession over 47 kanal of land under defendant No. 5 at the rate of Rs. 1/- per kanal per year. Specifically, it was pleaded that defendant No. 2 cultivated both the crops in 1983. Thereafter, he cultivated the crop of Rabi 1984. Still further, it was pleaded that the Local Commissioner; vide report dated 12.06.1983, found the defendant No. 2 to be in possession. Hence, prayer was made for dismissal of the suit.

5. On the basis of pleadings of the parties, Trial Court framed following issues:-

1. *Whether the plaintiff is cultivating the suit land as tenant on 1/3rd Batai under defendant No. 5?OPP*

2. *Whether revenue record of Kharif 1981 to Kharif 1982 is wrong and against facts?OPP*
3. *Whether the plaintiff has no locus standi to file the present suit?OPD*
4. *Whether the plaintiff has no cause of action to file the present suit?OPD*
5. *Whether the suit is bad for mis-joinder of necessary parties?OPD*
6. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD*
7. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction?OPD*
8. *Whether the plaintiff has not come to the Court with his clean hands and has suppressed the material facts from the Court if so its effect?OPD*
9. *Whether the defendant No. 2 Shankar is cultivating the suit land under defendant No. 5 as Mujara Gair Marusi at the rate of one rupee per month yearly on Chokota, if so to what effect and defendant No. 2 is in possession of the suit land?OPD*
10. *What is the effect of dismissal of civil suit No. 466 of 19.08.1982 alleged in para No. 8 of the preliminary objection?OPD*
11. *Relief.*

6. Parties led their respective evidence.

7. After hearing the parties and appreciating the evidence, the Trial Court decreed the suit filed by the plaintiff. It was held by the Trial Court that as per the documentary evidence which are jamabandies for the year 1979-80 Ex-P1, jamabandi for the year 1964-65 Ex-P2, Jamabandi for the year 1969-70 Ex-P3, Jamabandi for the year 1974-75 Ex-P4 and the Khasra Girdwaries for the year Kharif 1961 to Rabi 1983, the plaintiff had been recorded as in possession of the suit property. In these jamabandies earlier Naurang, the father of the plaintiff, has been shown in possession in capacity as tenant under Raja Harinder Singh. Subsequently, it is the plaintiff himself who has been recorded in possession over the suit property. Therefore, the plaintiff was held to be in possession over the suit

property. Regarding the evidence led by the defendant, the Trial Court held that since 1961 the plaintiff or his father had been shown to be in possession over the suit property then how the entries have changed in jamabandi for the year 1984-85, showing the plaintiff to be a sub-tenant under defendant No. 2 without notice is not explained anywhere. Therefore, these entries were stray entries and carried no weight. Regarding the khasra Girdawaries claimed by the defendant to be in his favour for the year 1982, the learned Trial Court held that how the name of defendant No. 2 was entered in these documents; has not been established on record. So far as the jamabandies Ex-D1 to Ex-D3, claimed by defendant No. 2 in his favour is concerned, it was held that even the detail of the land are not given in these documents. Therefore, the Trial Court held that the defendant has failed to substantiate his plea. Accordingly, the plaintiff was held to be in possession of the suit property and decree was passed in his favour.

8. Aggrieved against the judgment and decree passed by the Trial Court, defendant No. 2 filed an appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by defendant No. 2, thereby upholding the finding, the judgment and the decree passed by the Trial Court. The lower Appellate Court held that jamabandies right from 1961 to 1980 continuously show the plaintiff or his father to be in possession over the suit property. Vide Rapat No. 72, the column of cultivation was changed in favour of Shankar, defendant No. 2 for Rabi 1964. However, the copy of this report No.72 has not been led in evidence to show how the entry regarding cultivation was changed in favour of defendant No. 2. Further, this change of entry of cultivation did not find mention even in the subsequent jamabandies. Hence, these were only the stray entries. Regarding the claim of the defendants qua the Girdawaries entry being in their favour; the lower Appellate Court held that even in these Girdawaries, the

No. 2. However, since the defendant No. 2 has failed to show as to how these entries were changed to his name, his name in these entries are not sufficient to hold the possession of defendant No. 2. Regarding the claim of defendant No. 2, that earlier the suit filed by Raja Harinder Singh against defendant No. 2 was dismissed, therefore, defendant No. 2 is to be taken to be in possession over the suit property; was also dealt with by the lower Appellate Court. The lower Appellate Court held that since the plaintiff was not party to those proceedings, therefore, any judgment and decree passed in that suit cannot bind and affect the rights of the plaintiff. Regarding the report of Local Commissioner, claimed by defendant No. 2, to show his possession, the lower Appellate Court held that the Local Commissioner has not laid any concrete basis to record the finding of the possession in favour of the defendant No. 2. Merely because the Local Commissioner found some family members of defendant No. 2 standing on the land would not substantiate the factum of the possession of defendant No. 2 over the suit land. Accordingly, the appeal was dismissed.

9. While arguing the present appeal the learned Senior counsel appearing for appellant submitted that the possession of defendant No. 2 over the suit property is established by the fact that he has proved on record the receipt of rent by Raja Harinder Singh vide the receipt Ex. D1 to D3. Since the rate of rent was Rs.1/- per kanal per year and the receipt is of Rs. 47, therefore, it would show that defendant No. 2 was in possession over the entire land measuring 47 Kanals, which also included land measuring 12 Kanals claimed by the plaintiff. The second argument raised by the learned counsel for the appellant is that regarding the suit land earlier, Raja Harinder Singh had filed a suit against defendant No. 2. However, that suit was dismissed by judgment, Ex-D8. Hence, it is proved that the land is under possession of defendant No. 2. Lastly, learned counsel for the

the possession of defendant No. 2 over the suit land. Hence both the Courts below have gone wrong in holding the possession of the plaintiff over the suit property.

10. Learned counsel for the respondent/plaintiff submits that the entire revenue record shows possession of the plaintiff in continuity right from 1961 to 1984-85. One or two stray entries were entered in the name of defendant No. 2. However, no basis of these entries have been proved on record. Accordingly, as per the evidence on file, the plaintiff is proved to be in possession over the suit property. So far as the judgment, Ex-D8, given by defendant No.2 in his favour is concerned, learned counsel for the plaintiff has submitted that the plaintiff was not a party to that suit. Therefore, any finding recorded in that case is not binding upon him. In the same manner, learned counsel for the respondent impeached the report of the Local Commissioner and has submitted that both the Courts below have rightly decreed the suit in his favour.

11. Having heard the learned counsel for the parties and perused the record with their able assistance, this Court is of the considered opinion that both the Courts below have passed well reasoned judgments. The argument of learned counsel for the appellant/defendant No. 2. that since he has paid rent of Rs. 47/-, therefore, it shows that he was in possession over the entire land measuring 47 Kanals; which includes 12 Kanals over which the plaintiff is claiming possession; is liable to be noticed only to be rejected. Merely because defendant No. 2 claims to have paid the rent to the original owner would not be the conclusive proof of the fact of his possession over the suit land. Moreover, statedly, receipt has not been exhibited and proved on record in the present case. The possession over the suit land is to be established as per revenue record; since it is an agricultural land. The entire revenue record in the form of jamabandies and khasra Girdawaries, right from 1961 till 1985; except 1981 entries; shows the possession in favour of

entries in favour of the defendant No. 2 are concerned, this Court does not find any infirmity in the finding recorded by lower Appellate Court to the effect that defendant No. 2 has not been able to show any basis for Rapat No. 72; on the basis of these entries were made by the revenue officials. Moreover, it has not been proved on record whether any notice was given to the plaintiff before changing the entries in the revenue records regarding any khasra Girdawari or jamabandis.

12. So far as the plea of the learned counsel for the appellant regarding the earlier suit filed by Raja Harinder Singh being dismissed is concerned, the same is not a relevant fact for the present controversy. Admittedly, the present plaintiff was not a party to that suit. Therefore, any finding recorded in that suit is not binding upon the plaintiff. Moreover, Ex-D8, the judgment; shows that no finding regarding possession was recorded by the Court nor was any evidence led before it to show the basis of this change. It is, statedly, a decree based upon some understanding having being arrived between the parties. Hence, viewed from that angle also there is absolutely no finding recorded by the Court which can be used by defendant No. 2 in the present suit. Moreover, Section 43 of the Indian Evidence Act makes the earlier judgment in other suit to be totally irrelevant in subsequent suit unless the existence of such judgment itself is a fact in issue between the parties or the same is relevant under some other provision of the Evidence Act. Evidently, the judgment D-8 is not fact in issue between the parties in the present case. Learned counsel for defendant No. 2/appellant has not even shown as to how the Ex-D8 is relevant under any other provision of the Indian Evidence Act. Hence, the earlier judgment Ex-D-8 is totally irrelevant so far as the present suit for injunction; filed by the plaintiff is concerned.

13. So far as the report of the Local Commissioner is concerned, this Court does not find any infirmity in the manner in which this report has been dealt

Commissioner before the written statement was filed by defendant No. 2 in this case. So, it is obvious this was only for the purpose of interim order between the parties. Otherwise also, the Courts have rightly dealt with this report. Simply because the Local Commissioner found some family members of defendant No. 2 standing on the land in dispute; would not show their possession over the suit land; in the face of the entire revenue record showing the plaintiff to be in possession of the suit property. Otherwise also, the Local Commissioner report, even if it is taken in the face value, cannot supersede the plethora of the revenue records showing the plaintiff to be in possession of the suit property.

14. No other argument was raised by the learned counsel for the parties.

15. In view of the above, this Court does not find any perversity in the judgment and decree passed by the Courts below. The present appeal fails and the same is dismissed being devoid of any merits.

23rd April, 2018

shabha

**[RAJBIR SEHRAWAT]
JUDGE**

<i>Whether speaking/reasoned</i>	-	<i>Yes</i>
<i>Whether reportable</i>	-	<i>Yes</i>