

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

**RSA No. 1783 of 1991 (O & M)
Date of Decision:-15.2.2018**

Deep Chand and others

...Appellants

Versus

Goli

...Respondent

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. I.K. Mehta, Sr. Advocate with
Mr. R.K. Dogra, Advocate
for the appellants.

Mr. B.R. Rana, Advocate
for the respondent.

AMIT RAWAL J.(Oral)

The present appeal is at the instance of the defendant against the judgments and decrees of both the Courts below whereby the suit of respondent-plaintiff for declaration and permanent injunction that he is a gair marusi tenant over the suit property as per the description given in para 1 of the plaint and the entries in the column of cultivation showing the defendant in possession were in illegal was decreed. The suit was instituted on the premise that for the last 30 years he has been cultivating the land as gair marusi and was inducted tenant by one Man Mohan son of Shanktika, the previous owner of the land. Man Mohan Singh sold the land to the defendant and now the plaintiff stood as gair marusi tenant of the defendant i.e. the subsequent vendee. When the defendant wanted to

dispossess the plaintiff, the suit aforementioned was filed claiming the injunction. The defendant resisted the claim of the plaintiff by taking a plea that he has no locus standi and the suit was barred under Order 2 Rule 2 CPC and also other customary objections were raised. It was stated that the other co-sharers Devi Charan, Hira Lal, Bhim and Joginder were not joined as a party. The previous suit was also for correction of khasra girdawaries of the land as the suit land remained vacant, therefore, the possession reverted back to the owner, who was in actual physical possession of the suit land. The entries in the khasra girdawaries since Rabi 1978 were correct and were not liable to be interfered with.

From the pleadings of the parties, the learned trial Court framed the following issues for determination :-

1. Whether the plaintiff is in actual physical possession as gair marousi tenant as alleged ? OPP
2. Whether the plaintiff has no locus standi to file the present suit ? OPD
3. Whether the present suit is barred under Order 2 Rule 2 CPC and Section 11 CPC and Order 23 CPC as alleged? OPD
4. Whether the suit is not maintainable in the present form ? OPD
5. Whether the suit is barred by limitation ? OPD
6. Whether the civil Court has got no jurisdiction to try and entertain the present suit ? OPD
7. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
8. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD

9. Relief.”

On the preponderance of the evidence, the learned trial Court decreed the suit by holding that the entries of 1978 in the revenue record were liable to be corrected as the plaintiff is in possession of the suit property. The appeal laid before the lower Appellate Court also met with the same fate and it is in this background the present appeal has been preferred.

Mr. I.K. Mehta, learned senior counsel assisted by Mr. R.K. Dogra, Advocate appearing on behalf of the appellant submitted that the suit was not maintainable as the jamabandies carried a presumption of truth unless rebutted and which would prevail over the other entries. The Courts below ignored the fact that the earlier suit was filed which was for correction of the khasra girdawaries and the plaintiff could have claimed the relief therein, therefore the suit was barred under Order 2 Rule 2 CPC. Though the suit, aforementioned, was ultimately dismissed as withdrawn. In the jamabandi Ex.D1 for the year 1981 and Ex.D2 Khasra Girdawaries Kharif 1982-86, the appellants had been shown in cultivating possession of the suit land as owners.

Per contra, learned counsel appearing on behalf of respondents submits that the concurrent findings of fact cannot be interfered. It has only corrected the entries and nothing prevented the appellant-defendant claiming them to be owner or to take recourse in accordance with law, if law permits.

I have heard learned counsel for the parties, appraised the

paper book and of the view that there is no merit in the contentions of learned senior counsel for the appellant as the previous suit was for correction of the revenue entries was not decided on merits and therefore could not be hit by the provisions of Order 2 Rule 2 CPC, in other words there were no adjudication on the merits. The plaintiff proved the possession from 1962 to 1977 and no ejectment order had so far been passed. It is in that background of the matter, the Court below had corrected the revenue entries. The jamabandi for the year 1962-63 (Ex.P-2), 1966-67 (Ex.P-3), 1971-74 (Ex.P-4) and 1976-77 (Ex.PY) shown the possession of the plaintiff as gair marusi. I do not find any illegality or perversity in the judgments and decrees of both the Courts below as it was a simplicitor suit for correction of the revenue entries. The only remedy for the plaintiff is to seek the correction of the revenue record and jurisdiction for the same vests in the Civil Court. No grounds for interference or any substantial question of law is made out.

The appeal stands dismissed.

February 15, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No