

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.434 of 1991 (O&M)
Date of Decision: July 13, 2018

Ghanshaym & others

...Appellants

Versus

Dalu

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Hemant Sarin, Advocate,
for the appellants.

Mr.A.S.Tewatia, Advocate,
for the respondent.

AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree of the Lower Appellate Court dated 28.8.1990 reversing the judgment and decree of the trial Court dated 25.7.1989, whereby the suit of the appellant-plaintiff for declaration and permanent injunction for correcting the entries in Column No.5 of the jamabandi for the year 1958-59 upto the filing of the suit, in respect of the land, had been decreed.

The facts, which emanate from the pleadings of the parties, are that the appellant-plaintiffs instituted the suit No.531 on 6.8.1986 for correcting the entries in Column No.5 of the jamabandi for the year 1958-59 till the filing of the suit, wherein the name of defendant as gair-marusi of agricultural land bearing Khewat No.426, Khatoni No.595, Rect.No.58, Killa No.18, measuring 8 kanals, situated in the revenue estate of Village

Prithla, Tehsil Palwal, District Faridabad and entries in Column No.9 to be illegal, incorrect, null and void, ineffective being not binding upon the rights of the plaintiffs. The order dated 14.3.1986 passed by the Assistant Collector 2nd Grade, Palwal was also sought to be set-aside.

It was alleged that the plaintiffs were owners in possession of the agricultural land inherited from their mother Smt.Birwati, who along with her sister Gyaso, had inherited the suit property in equal shares from their father Lajja Ram son of Bhola. Plaintiffs had been cultivating the suit land since time immemorial, whereas the defendant had no right, title and interest in the suit property. The defendant in collusion with the revenue officials illegally entered status as tenant in the revenue record on the basis of the alleged exchange, but neither Lajja Ram (common ancestor of Gyaso and Birwati) nor the plaintiffs ever surrendered their rights over the suit land or handed over the possession to the defendant.

Plaintiffs instituted an application for correction of the khasra girdawari in the Court of Assistant Collector 2nd Grade, which was dismissed vide order dated 14.3.1986.

The defendant contested the suit by raising numerous preliminary objections qua locus-standi, *res judicata*, maintainability, limitation etc. On merits, it was alleged that the defendant was owner in possession of the suit land, which was given to him by Gyaso out of her own share as share of Birwati had already been utilized by her by way of various transactions. The application for correction of khasra girdawari submitted on behalf of Birwati was dismissed on 14.3.1986. The plaintiffs, who were minors, could not be in cultivating possession since the time immemorial, whereas the possession of the defendant was continuous,

uninterrupted for the last thirty years.

Since the parties were at variance, the trial Court framed the following issues:-

- 1) *Whether the plaintiffs are owners in possession of suit property? OPP*
- 2) *Whether the order of A.C.IInd Grade, Palwal dated 14.3.86 is illegal, null and void and liable to be set aside? OPP*
- 3) *Whether entries in the revenue records are incorrect and not binding? OPP*
- 4) *Whether the plaintiffs are estopped from filing the present suit by their own act, conduct and acquiescence? OPD*
- 5) *Whether the Civil Court has no jurisdiction to try the present suit? OPD*
- 6) *Whether the suit is not maintainable in the present form? OPD*
- 7) *Relief.*

The plaintiffs examined PW-1 Sumran Singh and PW-2 Achhe Lal and brought on record jamabandi Ex.P1 for the year 1958-59, Ex.P2 khasra girdawari from Kharif 1956 to Rabi 1959 and Mark A to Mark C, photocopies of jamabandies for the year 1982-83. On the other hand, the defendant examined DW-1 Dalu and DW-2 Deep Chand and placed on record Ex.D2 sale deed, Ex.D3 jamabandi for the year 1972-73, Ex.D4 khasra girdawari from Kharif 1975 to Rabi 1977, Ex.D5 jamabandi for the year 1982-83, Ex.D6 jamabandi for the year 1977-78, Ex.D7 jamabandi for the year 1972-73 and Ex.D8 khasra girdawari from Kharif 1983 to Rabi 1988.

The trial Court, on appreciation of the aforementioned evidence, found that plaintiffs must have been held to be owners of the suit property on the basis of the jamabandi for the year 1982-83, decreed the suit. The appeal laid before the Lower Appellate Court by the defendant has been allowed by setting-aside the judgment and decree of the trial Court. The suit was dismissed for the reason that the defendant had been shown to be in possession of the suit property and the entry in his name continued from 1958 to 1986 and, therefore, plaintiffs were not proved to be the owners of the whole land, but as share holders.

Mr.Hemant Sarin, learned counsel appearing on behalf of the appellant-plaintiffs, in support of the memorandum of appeal, raised the following submissions:-

- 1) The sale deed Ex.D2 vide which Gyaso, the other co-owner and sister of Birwati sold the land to the defendant, was having different khewat and khasra numbers and, therefore, the Lower Appellate Court could not have given the finding of joint ownership of the suit property;
- 2) The trial Court ought not to have framed the issue of ownership, for, the relief sought, as noticed above, was only for correcting the khasra girdawari;
- 3) Jamabandi Ex.P1 for the year 1958-59 showed the name of the defendant as gair-marusi. However, the defendant has not been able to prove payment of the rent or the reason that he had become owner in the absence of co-relation of the khasra numbers by virtue of the sale deed;
- 4) The Lower Appellate Court despite observation that the

defendant has not been able to prove by any evidence that he purchased the suit land, reversed the findings by holding that the entry to that extent was on account of exchange. No exchange has been proved on record, therefore, the long possession of 28 (twenty eight) years prior to the filing of the suit, would not result into ownership;

5) Plaintiffs never exchanged the suit land with the defendant. Even the sale deed Ex.D2 does not prove that Gyaso had sold her share in the suit land, whereas the cross-examination of PW-1 had not been read in correct perspective vis-a-vis harvesting of the crop by the defendant and, thus, urged this Court for setting-aside the findings.

Mr.A.S.Tewatia, learned counsel appearing on behalf of the respondent-defendant submitted that there is no illegality or perversity in the judgment and decree of the Lower Appellate Court, for, the plaintiffs admitted that defendant had been harvesting the crop of the suit land for the last two-four years and did not allow the plaintiffs to harvest the crop. Even no complaint was lodged to the police that the defendant had forcibly harvested the crop. Defendant had been in possession of the suit property on the basis of the sale deed Ex.D2. The suit was time barred as the same was filed in the year 1986 and the entry was of 1958. It is not a stray entry but consistent which would give a cause of action to the plaintiffs and, thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and records of the Courts below with their able assistance.

The suit simpliciter was for declaration and consequential relief

of permanent injunction for setting-aside the entries in the revenue record. The trial Court ought not to have framed the issue of ownership, for, the sale deed Ex.D2 produced on record by the defendant did not co-relate or corroborate the version of the defendant of having become owner of the suit property having purchased the same from Gyaso as the khasra numbers do not tally with the jamabandi for the year 1981-82. The Lower Appellate Court ought to have relegated the appellants to claim such relief. In my view, the suit was not properly filed as in such cases, the question of ownership always arises.

I cannot remain unmindful of the fact that the defendant has set up a plea of adverse possession, in essence had admitted indirectly ownership of the plaintiff, but the Court below has not adverted to the aforementioned part of the finding and, therefore, there is a gross misdirection. The Lower Appellate Court had no occasion to give finding regarding the ownership of the land partly in favour of the appellant and partly in favour of the defendant. The focus of the Court should have been only confined to the decision of 1986 passed by the Assistant Collector 2nd Grade declining the prayer, for, correction of khasra girdawaries does not confer any title. Since there was a dispute between the parties, they should have been relegated to claim the declaration vis-a-vis the ownership. There is no limitation for the purpose of claiming right of ownership.

For the reasons aforementioned, while upholding the judgment and decree under challenge, I give liberty to the appellants to seek correction in the revenue record by way of declaration of ownership as the defendant had claimed the ownership by way of setting up a plea of adverse possession and in case any such remedy is availed, the Court should decide

the suit uninfluenced qua reference to the title of the property which was not part of the primary relief.

The appeal stands disposed of in the aforementioned terms.

July 13, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No