

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

**RSA No.1640 of 2010 (O&M)**

**Date of decision:01.06.2018**

Virender Kumar

... Appellant

Vs.

Khem Chand and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr.Akshay Bhan, Senior Advocate with  
Mr. Santosh Sharma, Advocate  
for the appellant.

Mr. Gurinder Pal Singh, Advocate  
for respondents No.1 and 3.

Mr. Rajbir Singh,AAG, Haryana  
for respondents No.4 to 6.

**AMIT RAWAL J.**

**C.M.No.4985-C of 2010**

For the reasons stated in the application which is duly  
supported by an affidavit, delay of 04 days in filing the appeal is condoned.

C.M stands disposed of.

**RSA No.1640 of 2010 (O&M)**

The appellant-plaintiff has not been successful in suit claiming  
declaration to be lease holder of land measuring 3 kanals comprised in  
sq.no.38 killa no.23/1(3-0) situated in village Khajakhera within the  
municipal limits of Sirsa on the basis of registered lease deed bearing

No.3570 dated 29.09.1986 before the trial Court and Lower Appellate Court and thus, approached this Court by way of present Regular Second Appeal.

The aforementioned claim was based upon the fact that defendant no.2 – Rama Nand Brahmachari claiming himself as Incharge of Hanuman Mandir, near Shamshan Ghat, Gaushaqla Road, Sirsa, in the year 1987 instituted the suit to be in possession of land measuring 16 marlas comprised in sq.no.38 killa no.23/1 min (0-16). In that suit, appellant-plaintiff was arrayed as defendant. However, a compromise was arrived at between the parties and land measuring 6 marlas forming part of total land measuring 3 kanals was given to Rama Nand Brahmachari as licensee for the purpose of running an “Akhara” (place for local wrestling). Even demarcation in respect of land measuring 3 kanals was also conducted by the Tehsildar Sirsa and mutation no.6672 in this regard was sanctioned in favour of the plaintiff.

However, defendant No.1 being self styled President of Bishnoi Sabha filed a wholly false and frivolous application before defendant no.4 -Tehsildar. Tehsildar conducted the unlawful proceedings and order dated 4.2.1999 came to passed. On acquiring the knowledge of the impugned order, the plaintiff immediately filed an appeal against the aforementioned order which was stayed by the SDO, vide order dated 17.03.1999. Even FIR bearing No.231 dated 2.4.1999 at the instance of defendant no.1 was registered against the plaintiff. Defendant no.1 in connivance and collusion with defendants no.2 to 5 was attempting to raise wall around the suit land with intention to install gate and therefore, cause of action accrued to file

the suit.

Defendants No.1 & 2 and defendants No.3 & 4 filed separate written statements. The factum of possession of plaintiff was emphatically denied, much less status of licensee, for, it was sham transaction as lessor had no title or possession in the aforementioned property. It was averred that suit land had been used as Bishnoi Shamshan Ghat meant for burial ground for the children of aforementioned caste. The order of Tehsildar was passed after verifying all the documents and spot inspection.

Defendants No.3 and 4 filed separate written statement and reiterated the stand taken in the written statement of defendants no.1 and 2 affirming that place was being used as burial ground. Defendant no.5 filed separate written statement by stating therein that plaintiff managed to get fictitious lease deed and on the basis of that got mutation which was totally without jurisdiction. Even the inquiry was also marked by the Deputy Commission and it was found that lease deed was registered, therefore, it would be cancelled only by the Civil Court. Smt. Bimla Devi, alleged lessor was not found to be in possession of the suit property.

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

*“1. Whether the impugned order dated 4.2.1999 passed by defendants no.3 and 4 is wrong, incorrect, null and void and against law and facts, without jurisdiction, nonest and arbitrary, without jurisdiction and is liable to be set aside, as alleged? OPP*

2. *If issue no.1 is proved, whether the plaintiff is entitled to the decree for declaration with consequential relief of permanent injunction, as prayed for?OPP*
3. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*
4. *Whether the plaintiff has no cause of action to file the present suit?OPD*
5. *Whether the plaintiff has suppressed the material facts from the Court, if so to what effect?OPD no.3 to 5.*
6. *Whether the plaintiff has no locus standi to file the present suit?OPD No.3 to 5.*
7. *Whether the plaintiff is stopped by his own act and conduct to file the present suit?OPD no.3 to 5.*
8. *Whether the plaint is liable to be rejected under Order 7 Rule 11 CPC?OPD No.3 to 5.*
9. *Whether the suit is bad for want of notice under Section 80 CPC?OPD No.3 to 5.*
10. *Whether the suit is bad for non joinder of necessary parties and mis joinder of parties? OPD No.3 to5.*
11. *Whether the Civil Court has no jurisdiction to try and entertain the present suit?OPD No.3 to 5.*
12. *Relief.”*

The appellant-plaintiff examined as many as eight witnesses and brought on record documentary evidence Ex.P1 to Ex.P27 and in

rebuttal Ex.P28 and Ex.P29. On the other hand, defendants-respondents examined five witnesses and brought on record Ex.D1 to Ex.D9 and Ex.DW5/B.

On the basis of evidence brought on record, the trial Court dismissed the suit and appeal laid before the Lower Appellate Court also met with the same fate.

Mr.Akshay Bhan, learned Senior counsel assisted by Mr. Santosh Sharma, Advocate for the appellant-plaintiff submitted that judgments and decrees of the Courts below suffered from illegality and perversity, for, the Court has not given adherence to the fact that lease deed dated 29.9.1986 was registered document and no challenge was laid to the aforementioned document in the written statement or by setting up any counter claim. There was no question regarding the ownership of the suit land as the plaintiff had only claimed declaration being lessee in pursuance to the execution of the lease deed and injunction of forcible interference and dispossession. The impugned judgments and decrees of the Courts below are not sustainable as it failed to appreciate the fact that appellant had taken on lease the suit land from Smt. Bimla and Mahesh and entry in this regard had been effected in the jamabandi Ex.P11. Once the appellant-plaintiff had been found to be in possession, though in the ownership column, it was sham lal patti and thus, ownership was liable to be granted.

He further submitted that since respondent/defendant No.1 got registered an FIR No.231 dated 2.4.1999 against the appellant, whereby, Sessions Judge, directed the prosecution to give a clear 7 days notice to the

plaintiff in the application for anticipatory bail. The appellant on 19.4.1999 filed a criminal case against defendants no.1 to 4 and as a counter blast to the same, they started raising a wall giving cause of action to the plaintiff to file the suit and thus, urged this Court for setting aside the findings under challenge.

On the other hand, Mr. Gurinder Pal Singh, learned counsel for respondents No.1 and 3 submitted that concurrent findings of facts and law cannot be interfered until and unless, there is gross illegality and perversity, for, Bimla Devi was not recorded either owner or in possession of the suit land, therefore, was not competent to execute the lease deed. A person, who did not have possessory rights could not have transferred the property by the registered document, for, it had been established on record that the land in dispute was used as burial ground as Bishnoi Caste does not indulge into cremation. Bimla Devi was recorded only in one of the jamabandis but fact is that mutation no.6672 was cancelled, vide order dated 22.09.2000 (Ex.D2). Even khasra girdawari in favour of Bishnoi Sabha was also sanctioned, vide order dated 4.2.1999.

He drew the attention of this Court to Ex.P4, showing the remark of 15.6.1987, whereby, the mutation has been cancelled. The plaint was conspicuously wanting pendency of the revenue proceedings and that of status of appeal preferred against the order dated 04.02.1999, thus, urged this Court for upholding the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no

force and merit in the submissions of Mr. Bhan, for, evidence brought on record revealed that mutation bearing No.6672 which was earlier sanctioned in favour of the plaintiff, was cancelled by the revenue authorities, for, it failed to prove any title in favour of Bimla Devi, lessor. On the contrary, the possession on the spot found to be with Rama Nand Brahmachari and Bishnoi Shamshan Ghat. The plaintiff miserably failed to prove under what capacity Bimla Devi had authority to execute the lease deed, much less its registration. Farad jamabandi, Ex.P29 for the year 1963-64 revealed that suit land was owned by *shamlat patti mureet* and there were numerous marusi tenants but the name of Bimla Devi was not reflected. The mutation of the lease deed was entered in the revenue record as per the mutation no.3226/1 on 2.10.1986 (Ex.P4) but the same was cancelled on 15.6.1987, whereas, suit had been filed on 27.4.1999.

In view of such situation, the plaintiff miserably failed to prove that in what capacity lessor was authorized or competent to execute lease deed. Such attempt was manipulative one in order to take the possession of the suit land. It is also matter of record that the plaintiff managed to obtain mutation 6672 (Ex.P11) entered and sanctioned in his favour on 12.9.1998, but the same was again challenged before the Assistant Collector Ist Grade Sirsa, vide order dated 22.09.2000 (Ex.D2). The aforementioned mutation was cancelled. Even no explanation has come forth of appeal having laid against the order of cancellation of mutation. The Deputy Commissioner, Sirsa, had marked the inquiry to the revenue officer which revealed that lease deed could be only executed by the owner of the land and thereafter

mutation no.6672 was cancelled, vide order dated 22.09.2000 .

As an upshot of my findings, I am of the view that findings of facts and law arrived at by both the Courts below do not warrant any interference, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

The Regular Second Appeal stands dismissed.

June 01, 2018

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No