

RSA No.4621 of 2010 (O&M)
Date of decision: 02.11.2018

Versus

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Mr. Gaurav Chopra, Advocate
for respondent No.2.

REKHA MITTAL, J. (Oral)

Het Ram and others, sons of Sh. Pat Ram filed a suit for permanent injunction restraining the respondents/defendants from interfering in peaceful cultivating possession of land measuring 8 kanal and 8 marlas, detailed in head note of the plaint and restraining the defendants from damaging standing as well as future crops to be sown, removing the harvested crop and from ousting/dispossessing the appellants from suit land forcibly, illegally without due course of law.

It is averred that the plaintiffs are cultivating the suit land as gair marusi tenant having equal share each as per jamabandi for the years 1997-98 and khasra girdawari for the period 1998-99 to kharif 2001. They

are cultivating and sowing the crops peacefully and they have sown rabbi crop 2002 at the spot. Defendants No.2 and 3 have no concern with ownership or possession of suit land. They want to dispossess the plaintiffs forcibly and illegally in connivance with defendant No.1.

Defendant No.1 filed the written statement and raised preliminary objections inter alia that the suit is barred under Section 41(J) of the Specific Relief Act and liable to be dismissed with compensatory costs. It is submitted that the entries in the revenue record are not depicting true, correct and actual position at the spot.

Defendant No.2 and his father defendant No.3 are in possession at the spot. The land was sold by defendant No.1 in favour of defendant No.2 on 08.01.2002 for Rs.84,000/- and they are using the land for parking their buses.

Defendants No.2 and 3 also filed the written statement and, in turn, denied the plaintiffs to be in possession of the suit property with the averments that defendant No.2 is the real owner and in possession of the suit property on the basis of sale deed got registered by defendant No.1 in favour of defendant No.2. When possession was delivered to defendants No.2 and 3, land was vacant and there was no tenant at the spot. All other material averments of the plaint have been denied with a prayer for dismissal of the suit with costs.

Plaintiffs filed separate replications to the written statements, reiterated their stand taken in the plaint while denying the averments contained in the written statement.

The controversy between the parties led to framing of the following issues by the trial Court:-

1. Whether plaintiffs are entitled to the relief of injunction as prayed for?OPP.
2. Whether plaintiffs have concealed the material facts and therefore, are not entitled to the relief of injunction?OPD
3. Whether plaintiffs have no cause of action to file the present suit?OPD
4. Whether the present suit is barred under the provisions of Order 41(J) of Specific Relief Act?OPD
5. Relief.

The trial Court permitted the parties to adduce evidence in support of their respective contentions.

One of the plaintiffs Het Ram appeared in the witness box and they examined Sahib Ram PW2.

Smt. Brahma, defendant appeared in the witness box and the defendants examined Amit Kumar DW1, Krishan Kumar, Document Writer DW2, Boota Ram DW5 and Udey Pal Singh Patwari DW6.

The trial Court, by relying upon sale deed dated 08.01.2002 Ex.D2, khasra girdawari Ex.DW6/B corrected in the name of Amit Kumar on the basis of order dated 27.04.2007 passed by Assistant Collector, Second Grade, Sito Gunno accepted plea of the respondents/defendants that Amit Kumar is owner in possession of the suit land, therefore, the plaintiffs have no cause of action and locus standi to file the suit and they are not entitle for injunction against true owner. Further held that they have concealed material facts from the Court regarding purchasing suit property

by defendant No.2 Amit Kumar from Smt. Brahma, Defendant No.1. As has been noticed hereinbefore, the judgment and decree passed by the trial Court have been affirmed in appeal by the Additional District Judge, Ferozepur in view of observations made in para 13 of the judgment.

Counsel for the appellants/plaintiffs would argue that findings recorded by the Courts suffer from perversity as they failed to appreciate that order passed by the revenue authorities for correction of khasra girdawari during pendency of suit is of no consequence as dispute qua possession of suit land was pending adjudication before civil Court at the relevant time. In support of his contention, he has placed reliance upon judgments of this Court **Gurnam Singh and others VS. S. Jagjit Singh Rosha, 1975 PLJ 505** and **Sukhwinder Singh and another VS. Bhajan Singh, 2011(52) RCR (Civil) 917.**

Another submission made by counsel is that the appellants produced copies of jamabandis for the years 1992-93 Ex.P3 and 1997-98 Ex.P1 wherein the appellants have been shown to be in possession of suit land comprising khasra No.62//6 and 7/1 measuring 8 kanals 8 marlas and in column No.9, there is reference to batai tehai and in column No.11, there is entry of payment of land revenue though the land is shown to be owned by Smt. Brahma, wife of Sahib Ram, defendant No.1. In the khasra girdawaris from the year 1993 onwards, Het Ram and others have been recorded to be in possession of suit land, barani in nature. Khasra girdawaris for the years 1994-95, 1995-96, 1997-98 and 1998-99 records

cultivation of sarson or tara mira as rabi crop. It is vehemently argued that as the land is barani and irrigation depends upon natural source like rain etc., the appellants cannot be denied their right to protect their possession merely because no crop is shown to be grown from 1999-2000 onwards as per khasra girdawari Ex.P2. It is further argued that as Smt. Brahma, seller of defendant No.2 was not in possession of suit land, there was no occasion for her to deliver its possession to her vendee i.e. defendant No.2 on the basis of sale deed executed in the year 2002 and as such, recital in the sale deed recording factum of delivery of possession is nothing but a paper transaction. It is further argued that respondents/defendants have failed to adduce any evidence as to how Smt. Brahma recovered possession of suit land from the appellants in order to deliver the same to defendant No.2.

Counsel for respondent No.2 (contesting) is not in a position to dispute the enunciation laid down in the judgments cited at bar that correction of khasra girdawari made during pendency of the suit regarding possession is not sufficient to hold that the defendants are in possession of the suit land. That being so, the Courts have committed a serious error, rather perversity by relying upon correction of khasra girdawari on the basis of order of Assistant Collector, IInd Grade, Sito Gunno, in order to negate plea of the appellants that they are in possession of suit land or to hold that defendant No.2 is in possession of suit land. The Courts have also failed to consider that a presumption of correctness is attached to the entries recorded in the jamabandis though rebuttable one. Smt. Brahma, defendant No.1 appeared in the witness box to support cause of defendant

No.2 who had purchased the suit land vide sale deed dated 08.01.2002. Counsel for the respondents has failed to point out any such materials brought forth in testimony of Smt. Brahma in order to establish that entries in the revenue records do not depict the correct picture or Smt. Brahma recovered possession of suit land from Het Ram and others prior to execution of sale deed dated 08.01.2002 in favour of defendant No.2. As Smt. Brahma failed to adduce sufficient evidence to rebut the entries recorded in the jamabandis Exs.P1 and P3 and to establish that she had recovered possession of suit land by lawful means or otherwise, the respondents/defendants miserably failed to rebut the presumption of correctness available to entries in the jamabandis. The mere fact that in the sale deed executed between defendants No.1 and 2, there is a recital that possession has been delivered to the vendee is not at all sufficient to rebut correctness of the entries in jamabandis. Similarly, the fact that no crop was shown to be sown on disputed khasra numbers from 1999 onwards as per khasra girdawari Ex.P2 would not be an evidence that either the appellants are not in possession of suit land or possession thereof was taken over by Smt. Brahma or she further delivered possession in favour of defendant No.2 being purchaser of suit land vide sale deed dated 08.01.2002. In this view of the matter, I have no hesitation to hold that consistent findings recorded by the Courts are the result of failure to appreciate the factual and legal aspects in right perspective and as a matter of fact suffer from perversity, thus, cannot be allowed to sustain.

To be fair to respondent No.2, counsel would urge that at

present, the suit land is being used for running a sugar mill by defendants No.2 and 3. Any such contention raised by counsel for the respondents which is otherwise beyond pleadings cannot be appreciated much less accepted. This apart, for deciding the question of entitlement of injunction, the relevant point of time is the date of institution of the suit. This apart, no such plea has been raised by the defendants that after institution of the suit, possession of suit land has been recovered by defendant No.2 nor he filed an application narrating the subsequent events for appreciation of the Court. In this view of the matter, contention raised by counsel for respondent No.2 is totally misconceived and is accordingly rejected.

In view of what has been discussed hereinabove, the appeal is allowed. The judgments and decrees passed by the Courts are set aside. As a natural consequence, suit filed by the appellants/plaintiffs is decreed with costs throughout to the effect that respondents/defendants are restrained from interfering in peaceful possession of plaintiffs over suit land except in due course of law.

02.11.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No