

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

RSA No.4702 of 2010

Date of Decision.21.02.2018

Attar Singh and others

.....Appellants

Vs

Maqtul Baj and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate
for the appellants.

Mr. Sanjay Vashisth, Advocate
for respondent Nos.1 to 11 and 15.

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AMIT RAWAL J.(ORAL)

C.M. No.13925-C of 2010

The application for impleading the legal representatives of deceased-Karan Singh is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.4702 of 2010

The appellants-defendants are in regular second appeal against the concurrent finding of fact whereby the suit of the respondents-plaintiffs claiming declaration that the plaintiffs are owners in possession of the suit property as described in the plaint and permanent injunction on the premise that the defendants did not have any concern with the suit land by challenging the revenue entry to be illegal and null and void, has been decreed by both the courts below.

Before advertng to the rival contentions of the parties, it would be apt to give factual matrix involved in the controversy as emanated from

aforementioned suit on the premise that father of the defendants namely Khubi son of Amit Chand was in cultivating possession of the land as Muzara/tenant but failed to pay the lagan, necessitating the plaintiffs to institute a petition under Section 9 and 14(A) of the Punjab Security of Land Tenure Act before the Assistant Collector, Bhiwani. The aforementioned petition was decided on 30.06.1980 whereby Khubi was directed to hand over the vacant possession of the suit land. After ejectment order, Khubi cleverly left the physical possession of the suit land after paying ₹1000/- to the plaintiffs and gave affidavit in that regard. But in 1993, Rajpal Singh, one of the co-sharers and attorney holder of all the plaintiffs, gave suit land to the Forest Department for plantation of trees in five acres of land. The copy of the affidavit of Khubi was given to the Patwari for making necessary entries in the revenue record but the same was not done and the entries remained in favour of Khubi and on his demise in favour of his legal representatives. It is in that backdrop of the matter, the suit aforementioned was filed.

Upon notice, the appellants-defendants appeared and contested the suit on the ground that they have already filed a suit for claiming declaration of ownership on the ground of occupancy tenants, which was pending before the Court of Assistant Collector and filing of the aforementioned suit was a counter-blast. In fact, Khubi had been paying rent of the land but the present plaintiffs were not issuing any receipt. The suit was not maintainable on the premise that owing to the passage of time, the defendants have become occupancy tenants.

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

- “1. Whether the plaintiffs are owner in possession of the suit land and entry of original revenue records are wrong, illegal and null and void and are not binding the right of the plaintiffs on the ground alleged in the plaint? OPP*
- 2. Whether the defendants are liable to be restrained from interfering in the possession of the plaintiffs over the suit land?*
- 3. Whether the suit is not maintainable in the present from?*
- 4. Whether the plaintiffs are stopped by own act and conduct from filing the present suit? OPD*
- 5. Relief.”*

The plaintiffs in support of their case, examined Subhash Chander Clerk as PW-1, who produced the file of the ejectment suit bearing No.11 dated 25.10.1977, PW-2 Sher Singh Range Forest Officer who deposed that Rajpal son of Gaze Singh, one of the co-sharer, had given 17 hectare of land to the Forest Department for cultivation, PW-3 Jagpal, PW-4 Rajpal Singh, one of the co-sharer and attorney holder of all the plaintiffs, PW-5 Satyawrat Advocate, PW-6 Yashapl Chand Jain and brought on record documents Ex.P1 to Ex.P22.

The defendants examined DW-1 Umed Singh, DW-2 Attar Singh, DW-7 Balwan, who did not come forward for cross-examination and brought on record jamabandies for the year 1998 to 2003 and khasra girdawaries as Ex.D1 to D7. The trial Court on the preponderance of evidence decreed the suit. The aforementioned judgment and decree of the trial Court assailed before the lower Appellate also met with the same fate.

Mr. Vikram Singh with Mr. Abhinav Sood, learned counsel appearing on behalf of the appellants-defendants submits both the courts

below committed illegality and perversity in decreeing the suit. The fact of the matter is that Khubi had been paying rent to one of the co-sharers, who had not been cultivating the land and therefore, the ejectment petition was not maintainable but remedy was filing of the suit. There was no reason to disbelieve the revenue record which carries presumption of truth under Section 44 of the Punjab Land Revenue Act and could not have been corrected in the manner and mode as sought by the plaintiffs. The plaintiffs had miserably failed to prove the possession of the land with the Forest Department. The tenancy was inheritable and rightly so, the revenue record reflected in favour of legal representatives of Khubi. The ejectment order was only on account of non-payment of rent which was a nominal sum of ₹70.14 per year and it could not be believed that for such meager amount, anybody would leave 118 kanals 13 marlas of land. The suit of the plaintiffs was time barred as revenue record of 1984 was sought to be corrected in the year 1999, thus, urges this Court for setting aside the findings under challenge.

Per contra, Mr. Sanjay Vashisth, learned counsel appearing on behalf of respondent No.1 to 11 and 15 submits that the concurrent finding of fact cannot be tinkered with unless and until there is illegality and perversity, which the appellants have miserably failed to make out. The ejectment order became final as the same was not challenged and the property had been handed over to the Forest Department. It was the default of the Revenue Department of not correcting the entries. Had the same been done, the names of legal representatives of Khubi could not have been reflected in the revenue record, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Vikram Singh, for, the facts as noticed above have not been controverted. The petition of the appellants-defendants claiming ownership on the basis of occupancy tenants had been dismissed. Equally so, the ejectment order had become final. Once Khubi was ordered to be ejected and he handed over possession to Rajpal Singh, it was for the revenue authorities to correct the entries. Their failure to do so, compelled the respondents-plaintiffs to institute the suit. In my view the appellants-defendants have miserably failed to prove the possession of property on demise of Khubi. On the other hand, the officer/official of the Forest Department deposed that the property was handed over to the Forest Department vide agreement Ex.P1. All these facts have been noticed by the Courts below.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 21, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No