

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1931 of 2011 (O&M)

Date of Decision: February 01, 2018

Thuru Ram & others

...Appellants

Versus

Bachan Lal & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Vipin Mahajan, Advocate,
for the appellants.

Mr.R.K.Arya, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Appellant-defendants are aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit instituted by the respondent-plaintiffs claiming injunction from illegal, forcible dispossession and interference in respect of the suit land except in due course of law, has been decreed.

Mr.Vipin Mahajan, learned counsel representing the appellants submits that Mela Ram, father of the plaintiffs, was a tenant over the suit land and after his death, the plaintiffs stepped into his shoes as tenants, but the fact of the matter is that the defendants came to know about the incorrect entry in the revenue record. Resultantly, an application was moved for correction of the khasra gurdawari, which was ordered to be corrected vide order dated 19.12.2005 (Ex.D1). The aforementioned order was assailed before the Collector by the plaintiffs by filing an appeal, but the same was

dismissed on 12.1.2007 (Ex.D2). However, during the interregnum, the civil suit claiming the aforementioned relief was filed, but no declaration with regard to the entry as per Section 45 of the Punjab Land Revenue Act, 1887 was sought. During the course of arguments, he has also relied upon the jamabandies and khasra girdawaries after the passing of the order dated 19.12.2005 showing the possession of Om Lal (since deceased) and that of Thuru Ram in their favour and submits that the Lower Appellate Court has misdirected and, therefore, there is illegality and perversity in the impugned judgment and decree.

Per contra, Mr.R.K.Arya, learned counsel representing the respondents submits that a long and settled possession cannot be interfered, except in due course of law. This is precisely the relief has been sought in the suit. All the entries in the revenue record from 1978-79 onwards upto 2005, showed the possession of Mela Ram. He did not dispute the order dated 19.12.2005 rendered by the Assistant Collector II Grade, Dinanagar ordering the changing of khasra girdawari in the name of the defendants and dismissal of the appeal (Ex.D2), but submits that nothing prevented the appellant-defendants to seek dispossession in due course of law. The findings of the Lower Appellate Court, being the last Court of fact and law, are based upon the preponderance of evidence and, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Mahajan.

Sections 44 and 45 of the Punjab Land Revenue Act are reproduced as under:-

“44. Presumption in favour of entries in Records-of-rights and annual records: - An entry made in a record-of-rights in accordance with the law for the time being in force, or in an annual record in accordance with the provisions of this Chapter and the rules there under, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

45. Suit for declaratory decree by persons, aggrieved by an entry in a record: - If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.”

Section 44 prescribes that revenue document carries a presumption of truth unless and until rebutted. If at all, the order dated 12.1.2007 (Ex.D2) was passed during the pendency of the suit, nothing prevented the respondent-plaintiffs to seek amendment and challenge the aforementioned entry in support of the claim for permanent injunction. Having failed to do so, much less the jamabandi and khasra girdawari showed to this Court, the respondent-plaintiffs had not been in continuous possession and, therefore, they cannot, under the garb of the judgment and decree of the Lower Appellate Court, cause interference in the peaceful possession of the appellant-defendants. The documents (Ex.D1 and Ex.D2) have not been correctly interpreted by the Lower Appellate Court. In my view, there is illegality and perversity in the impugned judgment and decree.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in

Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR

2016 SC 1213, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial question of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back. For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29] ”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India.

This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned. Resultantly, the impugned judgment and decree of the Lower Appellate Court is set-aside and that of the trial Court is restored. Suit is dismissed.

Appeal stands allowed.

February 01, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No