

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

Date of decision: 1.10.2018

1.

RSA No.2178 of 2011(O&M)

Krishan Kumar

.....Appellant

VERSUS

Pardeep Kumar

.....Respondent

Present: Mr. M.S. Kathuria, Advocate for the appellant.

Mr. Sanjeev Kodan, Advocate for the respondent.

2.

RSA No.5083 of 2011(O&M)

Krishan Kumar

.....Appellant

VERSUS

Pardeep Kumar

.....Respondent

Present: Mr. S.P. Chahar, Advocate for the appellant.

Mr. Sanjeev Kodan, Advocate for the respondent.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of RSA Nos.2178 and 5083 of 2011 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.2178 of 2011.

The appellant/plaintiff filed the suit for permanent injunction restraining the respondent/defendant from interfering in peaceful

possession of the plaintiff over disputed land on the premise that he is gair marusi tenant in cultivating possession of the land since the year 1984-85.

The respondent/defendant contested the suit and raised averments that he purchased the suit land on 02.09.1982 and mutation was sanctioned on 20.10.1982. Since then, he is owner in possession of suit land. The plaintiff in collusion with Halqa Patwari got changed revenue record and khasra girdawari in his favour. In the records of Sadar Kanungo, Rohtak, the answering defendant is shown as owner in cultivating possession of the suit land. He moved an application to Superintendent of Police on 17.08.2001 and to the S.D.M, Jhajjar on 08.10.2001 in this regard.

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

1. Whether the plaintiff is in possession of the suit land as gair marusi tenant over the suit land? OPP
2. If 1st issue is proved, whether the plaintiff is entitled for injunction as prayed? OPP
3. Whether the defendant is owner and in possession of the suit land on the basis of sale deed dated 2.9.1982?
OPD
4. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. The appellant/plaintiff appeared in the witness box and examined a witness Ramanand son of Har Narain. He tendered into evidence copies of Jamabandis for the year 1984-85 Ex.P1, 1989-90 Ex.P2, 1994-95 Ex.P3, copies of khasra girdawaris for the years

1995-2000 Ex.P4, copy of order of DRO Ex.P5, copy of FIR Ex.P6, receipts regarding payment of rent Ex.P7 to P9, copy of application under RTI Act Ex.P10, copy of report of Public Information Officer Ex.P11, receipt of speed post Ex.P12, postal receipts Ex.P13, order dated 18.09.2004 Ex.P14, inquiry report of DSP Ex.P15, copy of judgments dated 14.07.2009 and 23.10.2009 Ex.P16 and P17, respectively.

To rebut evidence of the appellant, respondent/defendant appeared in the witness box. He produced documents i.e. copies of Jamabandi for the years 1984-85 Ex.D1, 1989-90 Ex.D2, 1994-95 Ex.D3, copy of roznamcha for the years 2001-02 Ex.D4, application under RTI Act Ex.D5, copy of postal order Ex.D6, reply of Public Information Officer Ex.D7.

Having heard counsel for the parties in the light of materials on record, the trial Court answered issues No.1 and 2 taken up jointly against the plaintiff/appellant and eventually suit filed by the plaintiff was dismissed vide judgment and decree dated 07.01.2010. The appeal preferred by unsuccessful plaintiff did not find favour with the District Judge, Jhajjar and the Appellate Court affirmed findings recorded by the trial Court without any variance.

Counsel for the appellant has submitted that findings recorded by the Courts are not based upon correct appreciation of materials on record and the same suffer from perversity and liable to be set aside. It is vehemently argued that in the Jamabandis from 1984-85 onwards, the appellant is recorded to be in cultivating possession of suit land being gair marusi tenant, therefore, he is entitled to protect his possession against forcible dispossession at the hands of respondent/defendant who

purportedly purchased the suit land vide sale deed dated 02.09.1982 on the basis whereof mutation has been sanctioned in his favour on 20.10.1982. It is further argued that plea of the appellant with regard to his being gair marusi tenant in suit land not only gets corroborated from consistent entries in the Jamabandis Ex.P1 to P3 and khasra girdawari Ex.P4, the appellant also produced receipts Ex.P7 to P9 that records the factum of payment of rent by the appellant to Sh. Gopi Ram, father of respondent Pardeep Kumar. The last submission made by counsel is that order dated 08.10.2001 passed in favour of the respondent cannot enure to his benefit as the authority that passed the order is not competent to order correction of revenue entries i.e. Jamabandis and khasra girdawaris.

Counsel for the respondent has supported the concurrent findings recorded by the Courts with the submission that the appellant miserably failed to plead and prove with regard to his being inducted as tenant in the suit land or his cultivating possession of the land in question measuring 3 kanal 12 marlas, detailed in para 2 of judgment passed by the Appellate Court. According to counsel, the Courts have rightly taken note that entries in the Jamabandi prepared by Patwari are at variance with the one maintained in the office of Sadar Kanungo known as Parat Sarkar. It is further argued that presumption attached to entries in the Jamabandis relied upon by the appellant gets sufficiently rebutted in view of entries in Jamabandis (Parat Sarkar) maintained by the Sadar Kanungo on behalf of Collector of the District. According to counsel, as there was difference in records maintained in the office of Patwari and that of Sadar Kanungo, the competent authority has rightly passed an administrative order dated 08.10.2001 in order to rectify the revenue records so that the appellant is

not able to take advantage of incorrect entries in the Jamabandis maintained by the office of Patwari.

I have heard counsel for the parties, perused the paper-book particularly the judgments impugned and copies of documents made available by counsel for the appellant during the course of hearing.

The Courts have consistently held that the appellant has failed to substantiate his plea that he is in possession of suit land much less as a gair marusi tenant on payment of rent etc. Counsel for the appellant has failed to point out any materials on record by way of oral evidence to substantiate plea of the appellant that he is in cultivating possession of the suit land. As has been rightly argued by counsel for the respondent, presumption available to entries in the Jamabandis relied upon by the appellant gets rebutted in view of Jamabandis maintained in the office of Sadar Kanungo known as Parat Sarkar.

The appellant has claimed that he is gair marusi tenant in cultivating possession of the suit land. The plaint is conspicuously silent as to when and by whom the tenancy was created in his favour. As the appellant has not raised any such plea that either the tenancy was created in his favour by vendor of Pardeep Kumar or by his father Gopi Ram, he cannot derive any advantage to his contention from the receipts Ex.P7 to P9. The matter would have been different had he raised a plea that he had been paying rent to Sh. Gopi Ram but during the course of evidence he had produced the receipts as an evidence of payment. In the absence of any plea that he was a tenant under Sh. Gopi Ram or had paid rent to him, the Court in appeal has rightly held that receipts Ex.P7 to P9 cannot be taken into consideration being beyond pleadings. This apart, perusal of

Jamabandis relied upon by the appellant would reveal that in the column pertaining to rent, there is no reference that the cultivator is in possession on payment of rent or Batai etc.

Taking a cumulative view of the discussion made hereinbefore, it is difficult to accept contention of the appellant that concurrent findings recorded by the Courts negating plea of the appellant to be in cultivating possession of suit land suffer from an error much less perversity warranting intervention. I would hasten to add that even if the order dated 08.10.2001 passed by the S.D.M. Jhajjar is taken out of consideration, it would be of no consequence either way.

In view of what has been discussed hereinabove, the appeals fail and are accordingly dismissed with costs.

OCTOBER 1, 2018

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no