

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

RSA No.1393 of 2012 (O&M)

Date of decision : 30.10.2018

Ram Parkash

...Appellant

Versus

Kirodi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rishab Lohan, Advocate for
Mr. R.N. Lohan, Advocate for the appellant.

Mr. Vikram Singh Narwal, Advocate for
Mr. Anoop Sheoran, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

CM No.5945-C of 2014

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of respondent No.4-Hari Ram and respondent No.9-Omi, as mentioned in para 2 of the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application is allowed.

Main case

The plaintiff-appellant is in the Regular Second Appeal against the findings arrived at by both the Courts below.

The plaintiff claims to be in possession of the property as tenant. There is no dispute that the plaintiff-appellant was in possession of the property in question and the proceedings for his eviction were initiated by the defendants. Initially, the eviction order was passed on 23.12.1998 and in

execution thereof, the possession was delivered. However, the tenant filed appeal and the order was reversed by the Appellant Court on 24.07.2003. It is also not in dispute that the aforesaid order passed by the Appellate Court has been affirmed in revision by the Commissioner of the Division.

In the present case, the plaintiff had filed a suit for declaration that the entries in the revenue records which have been changed in favour of the defendants should be directed to be corrected. Such suit is maintainable under Section 45 of the Punjab Land Revenue Act, 1887. Learned Trial Court has dismissed the suit on two grounds:-

1. Two co-owners have not been impleaded as party.
2. The suit filed by the plaintiff is premature as the revision petition is pending before the Commissioner.

Learned Appellate Court has dismissed the appeal on the ground that the decree for declaration is an equitable relief which can never be granted in favour of a person who has concealed the material facts.

As regards the non-impleadment of two co-sharers, learned counsel for the appellant has submitted that two co-sharers are the daughters of Raje Ram but their names never figured in the revenue records. Their names have been included only after filing of the suit. Since, on the day the suit was filed, the name of daughters was not included, therefore, the correction of revenue records would not in any way affect their right.

As regards the second reason i.e. suit being premature, it may be noted that the revision petition filed before the Commissioner has already been decided.

Learned First Appellate Court has held that the factum of

previous suit filed has been concealed, therefore, the plaintiff is not entitled to declaratory relief which is discretionary in nature. It has been explained by the learned counsel for the appellant that no doubt, a previous suit was filed for getting a decree of permanent injunction, however, due to the order of eviction passed by the Revenue Authorities dated 23.12.1998, the plaintiff-appellant was evicted and dispossessed, therefore, the suit for injunction was withdrawn. Hence, the concealment of the fact as noticed by the Appellate Court, is not material.

Learned counsel for the respondents did not dispute that the plaintiff-appellant through his LRs are in possession of the property as tenant. Such being the position, the revenue record has to reflect the aforesaid position. Any error in the revenue record is required to be corrected.

As per the Punjab Land Record Manual, the entry in the revenue record can only be corrected after following the due procedure. In the present case, both the Courts have not even adverted to the aforesaid procedure, which is required to be followed before changing the entry in the jamabandi.

In view thereof, the judgments passed by the Courts below are set aside. A decree for declaration is passed in favour of the plaintiff holding them entitled to get the revenue record corrected.

In view of the above, Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

30.10.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No