

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

**RSA No.4136 of 2011 (O&M)
Date of decision:27.02.2018**

Ram Lal ... Appellant
Vs.

Ram Singh ... Respondent

RSA No.4137 of 2011 (O&M)

Ram Lal ... Appellant
Vs.

Ram Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gurcharan Dass, Advocate
for the appellant.

Mr. HPS Ghuman, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.4136 and 4137 of 2011 arising out of decision of two civil suits, i.e., 38 of 08.02.2002 titled as “Ram Lal Vs. Ram Singh and others” (hereinafter called as “suit no.1”) for declaration and permanent injunction and 39 of 09.02.2002 titled as “Ram Singh Vs. Mukand Singh and others” (hereinafter called as “suit no.2”) for permanent injunction. The facts are being taken from RSA No.4136 of 2011.

Plaintiff- Ram Lal (in suit no.1) instituted a suit against the defendants for declaration to the effect that he was in possession of the plot measuring 2 biswas comprised in khewat no.287, khatouni no.551, khasra no.1384/960 (0-2) situated at village Dakounda as per jamabandi for the year 1997-98, with a consequential relief of permanent injunction restraining the defendants from encroaching upon the said plot of the plaintiff, much less, forcible dispossession and interference. It was pleaded that plaintiff was brother of defendant no.1, i.e., Ram Singh and defendant no.3 was wife of defendant no.1. The plaintiff being a landless person was allotted a plot under the scheme of Punjab Government, vide which the landless persons were allotted residential plots measuring 2 biswas to each allottees by the Gram Panchayat. The plot measuring 2 biswas represented by khasra no.1384/960 situated at village Dhakunda was allotted to the plaintiff by the Gram Panchayat by passing a resolution in the year 1974. The adjoining plot bearing khasra no.1383/960 was allotted to defendant no.1. The possession of plot bearing khasra no.1384/960, i.e., a plot in dispute was delivered to the plaintiff alongwith other allottees. Since the revenue officials changed the name of plaintiff from Ram Lal to Ram Singh, occasion arose to file a suit.

Defendants contested the suit by raising preliminary objections qua maintainability of the suit, much less description of the property. It was submitted that two plots bearing khewat no.287, khatouni nos.550 and 551 and 551 and khasra no.1382/960 (0-2) and 1384/960 (0-2) situated at village Dhakaunda were allotted to defendant no.1 and possession was also

delivered to him and since then, the defendants were in peaceful possession of the plots. The suit was filed to grab the suit property. In the other suit, Ram Singh, sought the injunction against Mukand Singh, Gram Panchayat, Makaunda on the premise that they were interfering into peaceful possession, therefore, injunction was sought for forcible dispossession and interference. Both the suits were consolidated.

On the basis of the aforementioned pleadings, the trial Court framed following issues:-

- “1. Whether plot measuring 2 biswas comprised in khewat no.287, khatouni no.551, khasra no.1384/960 situated in suit no.38/8.2.02 was allotted to Ram Lal son of Mukhtiar Singh? OP Ram Lal.*
- 2. Whether two plots measuring 2 biswas each out of khasra no.1384/960 as mentioned above were allotted to Ram Singh son of Mukhtiar Singh? OP Ram Singh.*
- 3. Whether Ram Lal plaintiff is in possession of plot measuring 2 biswas mentioned in civil suit no.38/8.2.02? OP Ram Lal*
- 4. Whether Ram Singh son of Mukhtiar Singh is in possession of both the plots measuring 2 biswas each as mentioned in suit no.39/9/3.2.02? OP Ram Singh.*
- 5. Whether the suit filed by Ram Lal No.38/8.2.02 is not within limitation? OP Ram Singh.*
- 6. Whether the suit filed by Ram Lal No.38/8.2.02 is not*

maintainable? OP Ram Singh.

7. *Whether Ram Lal plaintiff is entitled to declaration as prayed for in civil suit no.38/8.2.02?OP Ram Lal.*

8. *Whether Ram Lal plaintiff in suit no.39/9.2.02 is entitled to injunction as prayed for? OP Ram Lal.*

9. *Relief.”*

The suit no.1 was dismissed and suit no.2 was decreed. The appeal preferred by the appellant-plaintiff was also met with the same fate, therefore, the present Regular Second Appeals.

Mr. Gurcharan Dass, learned counsel appearing on behalf of the appellant-plaintiff/Ram Lal submitted that in order to prove the aforementioned case, PW3-Kirpal Singh was examined, who brought on record the list, Ex.P1 in suit no.1 and Ex.D1 in suit no.2 to prove that plot was allotted to the plaintiff but the trial Court did not pay any heed to the aforesaid information and rejected the claim. The list beyond any doubt proved the name of plaintiff at serial no.9 and defendant no.1 at serial no.8. However, in the mutation proceedings, allotment was done in favour of defendant no.1 only. The act and scheme did not envisage allotment of two plots, therefore, stand of the defendant was belied from the import of scheme. Mukand Singh was none-else but brother of both and he was residing with defendant no.1. Mukand Singh supported the case of the appellant but the Court below abdicated in decreeing the second suit and not noticing the material document, i.e., Ex.P7, whereby, two plots were shown in the name of Ram Singh. Rule 10 of the Punjab Village Common Lands

(Regulation) Rules, 1964 as applicable to Punjab envisaged allotment of only one plot, therefore, the alleged entry in the mutation against the statutory rules was liable to be rejected. The documentary evidence produced by the appellant has not been appreciated properly and thus, there is illegality and perversity in the findings under challenge. The suit of defendant no.1 ought not to have been decreed against Mukand Singh, who supported the case of the appellant. On the basis of the Ex.P7, defendant is illegally enjoying the possession of 4 biswas of land which he is not entitled to.

Per contra, Mr. HPS Ghuman, learned counsel for the respondents submitted that plaintiff miserably failed to discharge the onus with regard to the allotment. The cross-examination of PW3-Kirpal Singh, revealed that list did not bear the stamp of Gram Panchayat and had not been corroborated by any other evidence. It was merely a tax register. No member from the Gram Panchayat had been examined. The concurrent findings of facts and law cannot be interfered with until and unless there is gross illegality and perversity.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Gurcharan Dass.

It is settled law that for claiming declaration and permanent injunction, the plaintiff has to stand on his own legs to discharge the onus as enshrined under Section 101 of the Indian Evidence Act. The plaintiff has

miserably failed to prove the allotment regarding two biswas of land in his favour as no allotment letter or any witness from the concerned department was examined to prove the same. Ex.P1 is a tax objection register which is not the document of title. Ex.P7 is the mutation which shows that defendant No.1 -Ram Singh was in possession of 4 biswas of land. The plaintiff has also not been to place on record any document with regard to possession.

In view of what has been observed above, I do not find any illegality and perversity in the findings of the Courts below, much less, no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeals stand dismissed.

(AMIT RAWAL)
JUDGE

February 27, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No