

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

RSA No.1792 of 2016 (O&M)

Date of Decision: 25.07.2018

Gurmakh Singh

... Appellant

Versus

Gurmit Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. H.S.Batth, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

A suit for permanent injunction filed by plaintiff Gurmakh Singh restraining the defendants from forcibly dispossessing him from the suit land measuring 120 kanals and as described in the head note was dismissed by the trial Court on 08.12.2011 and the judgment of the trial Court stands affirmed vide judgment dated 17.09.2015 passed by the learned Additional District Judge, Ferozepur.

Resultantly, plaintiff/appellant Gurmakh Singh is in second appeal before this Court.

Brief facts of the case are that the plaintiff/appellant instituted the suit on the pleadings that Central Government is the owner of the suit land, which was *banjar kadeem* and he had made the same fit for cultivation. His possession over the suit land was continuous and peaceful since the year 1982. Defendant No.3 Bohar Singh in connivance with the revenue authorities managed to get entered a report No.65 dated 07.10.2010 in the revenue

records in favour of defendant Nos.1 and 2. As per such report No.65, Defendant Nos.1 and 2 were reflected to be cultivating portion of the suit land. Precise case set up on behalf of the plaintiff/appellant was that report No.65 was a false and fabricated report and on the strength thereof the possession of the plaintiff cannot be disturbed.

Suit was contested by taking preliminary objection of non-joinder of necessary parties by stating that Malkiat Singh son of Ujagar Singh and Hardip Singh son of Baghel Singh are in cultivating possession of some of the suit land and have not been made parties to the suit. Possession of the plaintiff over the suit land was denied by the defendants.

Suit of the plaintiff was dismissed by the trial Court vide judgment and decree dated 19.07.2008. Appeal having been preferred, the then learned District and Sessions Judge, Ferozepur vide order dated 17.11.2009 set aside the judgment of the trial Court dated 19.07.2008 and remanded the matter back to the trial Court for framing of an additional issue i.e.

“Whether report No.65 dated 07.10.2000 in favour of the defendant is illegal, null and void or forged and fabricated. If so what is its effect?” OPD.

The order of remand dated 17.11.2009 was put to challenge by the plaintiff/appellant in this Court by filing SAO No.7 of 2010 and which was disposed of in the following terms:-

“Learned counsel for the respondent has stated that he has no objection, if instead of the whole

case being remanded back, report should be summoned from the Trial Court on the additional issue framed.

In view of this agreement, this petition is allowed and the impugned order is set aside. The appeal stands revived accordingly. It is directed that the matter be referred back to the learned trial Court for taking evidence on the additional issue and then send its report back to the learned Lower Appellate Court.

Parties are directed to appear through their counsel before learned Lower Appellate on 01.04.2010.

Consequently, this appeal is disposed of.”

Trial Court has thereafter denied the relief of permanent injunction vide judgment dated 08.12.2011 and even civil appeal preferred by the plaintiff/appellant has been dismissed.

Learned counsel representing the appellant has raised a solitary contention that Jamabandis for the years 1995-96 Ex.P-4, khasra girdawari of the suit land for Sawni 1986 to Sawni 2001 Ex.P-5 to Ex.P-11 reflected the names of the appellants and such evidence has not been appreciated by the Courts below.

It was further contended that respondent No.3 Bohar Singh in connivance with the revenue authorities got entered report No.65 dated 07.10.2000 in the revenue records in favour of respondent Nos.1 and 2 and thereby reflecting their possession and the Courts below have erred in overlooking the factual aspect

that the appellant had not made any statement before the revenue authorities as was mentioned in report No.65.

Counsel for the appellant has been heard at length and the case paper book has been perused.

A finding of fact based upon evidence adduced on record in the shape of revenue entries has been recorded that the plaintiff/appellant had not remained in cultivating possession over the suit land for the entire period from Sawni 1986 to Harri 1991. It has been noticed that as per Ex.P-8 from Sawni 1991 to Harri 1996 the Central Government had remained in possession of certain portion of the suit land.

That apart in a criminal trial that ensued upon registration of criminal case FIR No.75 dated 19.05.2002 under Sections 420, 467, 471 IPC registered at Police Station Makhu against the respondents herein, the present appellant Gurmakh Singh had himself subjected into witness box as PW-1 and had categorically admitted his thumb impression over rapat No.65 and had deposed that he had put his thumb impression on his own and such statement was got recorded by him before the Court on 01.10.2008. As per his deposition the correction in the khasra girdawari had been made with his consent.

The concurrent finding recorded by the Courts below is that the plaintiff/appellant has failed to prove his possession over the suit land as on the date of institution of the suit and rather it is respondent/defendants whose possession stands reflected as per Rapat No.65 in which khasra girdawari was changed in their names

with the consent of the plaintiff/appellant.

In view of the above, no infirmity is found in the impugned judgment passed by the Courts below denying to the appellant herein the relief of permanent injunction pertaining to the suit land.

No merit.

Appeal dismissed.

25.07.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No