

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

**RSA No. 2281 of 2016 (O&M)
Date of decision: 10.5.2018**

Kamlo Devi

... Appellant

Versus

Gurdial Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Puneet Sharma, Advocate, for
Mr. Sandeep Arora, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiff was dismissed by the trial court, vide judgment and decree dated 16.7.2012. As even the appeal preferred against the said decree failed, and was dismissed on 12.8.2015, the plaintiff is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a declaration that she is the owner in possession of land bearing khata No. 55, surkhi 53, khatoni No. 122, killa No. 23R/4 measuring 8 kanals, situated in village Muthi, HB No. 33, and land bearing khata No. 59, surkhi No. 56, khatoni No. 141, killa No. 23R/7, measuring 8 kanal HB No. 33, as the defendants had no right, title or interest therein. Further, the revenue entries showing defendants as owners of the suit land and plaintiff as tenant were incorrect.

On a consideration of the matter in issue and the evidence on

record, both the courts concurrently concluded that though, as per version of the plaintiff, property owned by the grandfather of defendants No.4 and 5, namely Sh. Nathu, was declared as surplus, pursuant to the order dated 23.5.1978, out of which khasra Nos. 23R/4 and 23R/7 were allotted to Sh. Bajo Ram, the husband of the plaintiff. However, no such order, i.e. order dated 23.5.1978, was brought on record, least proved. Although, a photocopy of the order dated 31.3.1981 was placed on record as Ex.P1, in which there was a reference to the order dated 23.5.1978. Likewise, a photocopy of report (Ex.P2) was brought on record, showing implementation of the order dated 31.3.1981. But, in terms of Section 61 of the Indian Evidence Act, 1872 (hereinafter referred to as 'Act'), contents of the documents were required to be proved either by primary or adducing secondary evidence. Further, Section 76 of the Act postulates that a public document may be proved by certified copy thereof, thus, any order passed by Collector, Agrarian, was a public document, and could be proved by producing its certified copy. But as the documents (Ex.P1 and Ex.P2), were not even the certified copies, these could not be termed as primary evidence. No permission was sought either to prove these documents by way of secondary evidence under Section 65 of the Act. Thus, Ex.P1 and Ex.P2 were inadmissible in law. Even otherwise, a perusal of the document (Ex.P1), revealed that no khasra numbers were mentioned therein, therefore, if the plaintiff intended to connect the khasra numbers that were mentioned in Ex.P2, the document that was required to be proved on record was the order of the Collector, Agrarian, dated 23.5.1978. On the contrary, the defendants proved the certified copy of the order dated 11.8.1984 (Ex.D3), passed by the Collector, Agrarian, which showed that property of Sh. Nathu

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was not surplus land, and the possession was restored to the owners, vide rapat roznamcha No. 436, dated 16.8.1989. Thus, the entries (Ex. D5 to Ex. D7), were accordingly made in the revenue record. Likewise, subsequent jamabandies (Ex. D8 to Ex. D11) were recorded in sync with the order dated 11.8.1984. That being so, the only and the inevitable conclusion that one could reach was: the plaintiff failed to substantiate her claim. On being pointedly asked, learned counsel for the appellant could not show as to how, the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

10.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO