

RSA No.3002 of 2015 (O&M)

{1}

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

RSA No.3002 of 2015 (O&M)

Date of decision:19.11.2018

Mahender Singh

... Appellant

Vs.

Lok Ram and another

... Respondents

RSA No.3962 of 2015 (O&M)

Mahender Singh and others

... Appellants

Vs.

Lok Ram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naveen S. Bhardwaj, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.7181-C of 2015 in RSA No.3002 of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 88 days in re-filing the appeal is condoned.

C.M stands allowed.

C.M.No.7182-C of 2015 in RSA No.3002 of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 30 days in filing the appeal is condoned.

C.M stands allowed.

C.M.No.9686-C of 2015 in RSA No.3962 of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 118 days in re-filing the appeal is condoned.

C.M stands allowed.

C.M.No.9687-C of 2015 in RSA No.3962 of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 31 days in filing the appeal is condoned.

C.M stands allowed.

RSA Nos.3002 and 3962 of 2015 (O&M)

This order of mine shall dispose of two Regular Second Appeals bearing nos.3002 of 2015 arising out of decision of civil suit no.259 of 2008 titled as “Lok Ram and another Vs. Mahender Singh and others” seeking permanent injunction (hereinafter referred to as “first suit”) and 3962 of 2015 arising out of decision of civil suit no.376 of 2009 titled as “Mahender Singh and others vs. Lok Ram and another” seeking permanent declaration (hereinafter referred to as “second suit”).

First suit was filed by the respondent-plaintiffs seeking injunction against the appellants Mahender Singh and others restraining them from causing interference in the land measuring 8 bighas 2 biswas bearing khasra no.315 min.

Second suit was filed at the instance of appellant-plaintiffs who were defendants in the first suit for declaration and correction of khasra girdawari incorrectly recorded since 1982 till filing of the suit.

Both the suits were decided separately vide judgments and decrees but by the same Court. The assertion in the plaint in the first suit of plaintiffs was defence in second suit as defendants and that of Mahender Singh and others in first suit as defendants and second suit as plaintiffs had been same claiming the injunction on the premise that they had been in cultivating possession of the suit land for more than 16 years and become the owners by virtue of provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953. On account of threat perception, the injunction, aforementioned, was sought.

The defendants opposed the suit and stated that land was *shamlat patti* but the possession had always been of the defendants. Injunction sought was in respect of the land which had been in possession of defendants. It was also explained that Lok Ram and another had been in possession of some other piece of land measuring 10 bighas. Both the parties led extensive evidence.

The plaintiffs examined three witnesses and brought on record Ex.P1 to Ex.P12, Mark A and Mark B. On the other hand, defendants also examined two witnesses and brought on record documentary evidence, i.e., Ex.D1 to Ex.D8 and Ex.D8/A to establish their possession.

On preponderance of the evidence, the trial Court decreed the first suit and appeal laid by Mahender Singh before the Lower Appellate

Court was also dismissed. In second suit, defendants sought the correction of khasra girdwari, as noticed above, as the documents relied upon showed the possession of khasra no.315 min measuring 8 bighas 2 biswas. The Courts below did not agree with the contention and rejected the suit.

Mr. Naveen S. Bhardwaj, learned counsel appearing on behalf of the appellant(s) submitted that both the Courts below have committed illegality and perversity in dismissing the second suit and decreeing the first suit, for, there has been misreading of the documentary evidence and the order, Ex.P1 passed in 1982 dealing with the correction of revenue record and Ex.P2 in appeal which pertained to some consolidation proceedings, thus, had no relevancy, for, the same did not culminate into effective decision on the premise that suit was pending adjudication. The revenue record, *ibid* relied upon showed/proved the possession, therefore, the Courts below were required to advert to all the documents to arrive at the findings, thus, there is gross illegality and perversity.

I am afraid the aforementioned argument is not sustainable as entries recorded in the revenue record relied upon by the plaintiffs as noticed above reflecting the conscious possession. The jamabandi may show the possession but the khasra girdawaris are the documents which show the person in cultivating possession of different crops sown in the year. It is unbelievable that a person who is alleged to have been in possession of the property did not know about the entries recorded in the revenue record i.e. Khasra girdawari. All these factors weighed in the mind of the Courts below while decreeing the first suit and dismissing the second suit.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 19, 2018
savita

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