

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-5693-2016 (O&M)

Date of Decision: 18.5.2018

Shiromani Gurudwara Parbhandak Committee, Amritsar

....Appellant.

Versus

Inderjit Singh

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Har Naresh Singh Gill, Advocate for the appellant.

AJAY KUMAR MITTAL, ACJ.

1. CM-14874-C-2016 is allowed and the appellant is permitted to make good the deficiency in court fee.

2. Having lost before both the Courts below, the appellant-plaintiff has approached this Court by way of instant Regular Second Appeal challenging the judgment and decree dated 31.3.2016 passed by the Additional District Judge, Amritsar, affirming that of the Civil Judge (Junior Division), Ajnala, dated 26.2.2015 whereby the suit of the plaintiff for declaration with consequential relief of permanent injunction, was dismissed.

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein are that the land as mentioned in the head note of the plaint was uncultivable land owned by *Jumla Mushtarka Malkan Hasab rasad Raqba Khewatwar, i.e. Maqbuja Malkan* and the plaintiff was owner in possession to the extent of $\frac{1}{2}$ share in the proprietary body. The defendant in connivance with the revenue officials had got his name

entry of Fard Badar No.9 regarding the suit property. According to the plaintiff, the defendant had no right, title or possession over the suit property but he was interfering into the peaceful possession of proprietary body of the suit property and threatened to dispossess the proprietary body from the suit property which gave rise to the filing of the suit for declaration with consequential relief of permanent injunction. Upon notice, the defendant contested the suit by filing a written statement. Besides raising various preliminary objections therein, it was pleaded that the name of the defendant had been correctly entered into the column of cultivation and that the plaintiff had no cause of action. It was further pleaded that the suit had not been filed by the authorized person. Rest of the averments made in the plaint were denied and a prayer for dismissal of the suit was made. The plaintiff controverted the averments made in the written statement by filing replication.

4. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the declaration, as claimed in the suit? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as claimed in the plaint? OPP
3. Whether the civil court has no jurisdiction to try the suit? OPD
4. Whether the plaintiff has got no cause of action or locus standi to file the present suit? OPD
5. Whether the suit is properly valued for the purposes of court fee and jurisdiction? OPP

6. Whether the suit of the plaintiff is bad for mis-joinder and non joinder of necessary party? OPD
7. Whether the plaintiff is estopped from filing the suit as pleaded in Para No.4 of written statement?OPD
8. Whether the suit is within time? OPD
9. Whether the suit has not been filed by the duly authorized persons? OPD
10. Relief.

5. Both the parties led their respective evidence. The trial Court taking up issues No.1 & 2 together on appreciation of the oral as well as documentary evidence led by the parties, dismissed the suit of the plaintiff vide judgment and decree dated 26.2.2015 holding that since the plaintiff had failed to prove their rights qua the suit property, therefore, no relief of declaration and permanent injunction can be passed in their favour. The relevant findings of the trial Court read thus:-

“20. By way of present suit plaintiff has requested for declaration to the effect that 2K-12M of land of Khasra No.499/2 is uncultivable land owned by *Jumla Mushtarka Malkan Hasab Rasad Raqba Khewatwar* and is in possession of proprietary body i.e. *Maqbuja Malkan* and *fard badar* no.9 in favour of defendant is illegal and is not binding upon the rights of proprietary body. With regard to *Hasab Rasad land* it is observed that said land was reserved at the time of consolidation from common land of proprietors by applying principles of pro-rata cut. In case law **Gram Panchayat of**

Village Jamalpur v. Malwinder Singh, (SC) : 1985 R.R.R. 249 : 1985 PLJ 463 : 1986 RLR 73 : 1985 AIR (SC) Para 3 it is discussed as:-

*“...Prior to the partition of India on August 15, 1947 the **Shamlat-deh** lands in Punjab were owned by the proprietors of the other lands in the village, “**Hasab Rasad Khewat**”, that is to say, in the same proportion in which they owned the other lands. Therefore, a person who did not own any other land in the village could have no proprietary right or interest in the **Shamlat-deh** lands....”*

Thus, in order to make SGPC entitled for the relief to the declaration some direct link or evidence should be established that at the time of consolidation portion of land has been kept as *Hasab Rasad* land. But, there is no such evidence on file to that effect that plaintiff committee is proprietor of land at the time of consolidation. Even the cross-examination of PW-1 reflects that suit land is cultivable and crop of wheat and rice can be shown there and therefore, in my considered view, the relief of *Hasab Rasad* and suit land being uncultivable cannot be granted.

21. However, with regard to Fard Badar entry no.9 it is observed that the relief to the said point is to be granted while taking into account all the relevant facts and circumstances of the case. No doubt, said aspect is an important aspect but, for the purpose of relief of present issues the said point is not directly substantial question. Even then,

for the sake of discussion it is observed that the stand of defendant Inderjit Singh is material one that he has not moved any application for correction of khasra girdawri before revenue authorities at Ramdas and therefore, the order suggesting change of khasra girdawri from revenue authorities at Ramdas reflects very serious concern about the nature of functioning of said office and in my considered view, the plaintiff would be well within their rights if they approach the appropriate court for any proceedings or any other remedy available to them under law. It is therefore, summarized that although the said entries are not duly proved as per law but since the plaintiff has failed to prove their stand and their rights qua suit property therefore, at present no relief for declaration and permanent injunction can be passed in favour of plaintiff. Thus, issues stands disposed of against plaintiff and in favour of defendant.”

Further, it was recorded that the suit had not been filed by the authorized persons.

6. Against the said judgment and decree dated 26.2.2015, the plaintiff filed an appeal before the lower appellate court who upheld the findings of the trial Court and dismissed the appeal vide judgment and decree dated 31.3.2016, with the following observations:-

“12. The plaintiff has sought the decree of declaration to the effect that land in question is land owned by Jumla Mushtarka Malkan Hasab Rasad Raqba Khewatwar i.e. Maqbuja Malkan and is proprietary and Fard badar No.9 in

favour of the defendant is illegal and is not binding on the rights of the proprietary body. The defendant has specifically denied the case of the plaintiff to the extent that the plaintiff is not in possession of the suit land and the suit is also not non-cultivable rather it is cultivable land.

13. The perusal of the revenue record Ex.P1 shows that the land in question is Jumla Mushtarka Malkan Hasab Rasad Raqba Khewatwar i.e. Maqbuja Malkan. In column No.5 it is recorded as Makbuja Mankana. The entry with regard to sanction of Fard Badar and the Jumla Mushtarka Malkan Hasab Rasad Raqba Khewatwar i.e. Maqbuja Malkan is also on the record. Ex.P3 shows that the land as Garmumkin and is possession of the Maqbuja Malkana. The plaintiff has not challenged the Khasra Girdawari vide which the land has been shown in possession of the defendant. The defendant has brought on record the revenue record in the form of Jamabandi Ex.D2 and Ex.D3 showing the possession of Makbuja Malkana and entry of Fard Badar. The plaintiff has filed a suit challenging the khasra girdawari in favour of the defendant but the plaintiff is not even in possession of the suit property. The ownership of the Jumla Mushtarka Malkan Hasab Raqba Khewatwar i.e. Maqbuja Malkan land is in favour of proprietary body and in case of Panchayat of Village Jamalpur vs. Malwinder Singh 1985 RRR 249 it was held that prior to the partition of India and August 15, 1947 the shamlat deh land in Punjab were owned by the proprietors of the other

land in the Village hasab Rasad Raqba Khewatwar that is to say in the same proportion in which they owned the other land therefore a person who did not owned any land in the village could have no proprietary right or interest in the shamlat deh. The evidence produced by the plaintiff is not with regard to any evidence that at the time of consolidation portion of land has been kept as Hasab Rasad land. The PW1 in cross examination has stated it to be correct that in the land peddy and wheat is cultivated. Inderjit Singh is also a cosharer in the land and he is not aware whether SGPC has filed appeal against the order of Fard Badar. DW2 Inderjit Singh has stated that Khasra Girdawari was correct in his name vide rapat No.414 dated 26.5.2007.”

7. Hence, the present appeal claiming the following substantial questions of law:-

- “i. Whether the courts below have erred by ignoring the admissible evidence led by the appellant/plaintiff?
- ii. Whether the statement of Paramjit Singh Patwari DW1 can be ignored as there is no order dated 26.11.2006 passed by Assistant Collector regarding Fard Badar?
- iii. Whether the judgments and decrees passed by the courts below are based on misreading of statements and the findings are based on perversity?

iv. Whether the judgments and decrees passed by the courts below are sustainable in the eyes of law?”

8. I have heard learned counsel for the appellant.

9. Learned counsel for the appellant has made an attempt to persuade this Court to re-appreciate the evidence led by the parties before the trial Court to differ with the opinion of the courts below which is not permissible in view of the provisions of Section 100 of the Code of Civil Procedure. The Courts below on appreciation of oral as well as documentary evidence had recorded a concurrent finding of fact that the plaintiff-appellant had failed to produce any evidence that they were proprietor of the land at the time of consolidation. Further, a finding of fact was recorded by the courts below that since the plaintiff had failed to prove their rights qua the suit property, therefore, the plaintiff was not entitled to a decree of declaration and permanent injunction. The trial court had held that the suit land being cultivable, the relief of *Hasab Rasad* cannot be granted. No misreading of evidence on record by the courts below had been shown by the learned counsel warranting interference by this Court in the regular second appeal.

10. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

11. In view of the above, the present appeal being devoid of any merit, is hereby dismissed. No costs.

May 18, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned
Whether Reportable

Yes
Yes