

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

**RSA No.6661 of 2016 (O&M)
Date of decision:16.11.2018**

Dariya (now deceased) through LRs ... Appellant

Vs.

The State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

AMIT RAWAL J.

C.M.No.17401-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 33 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.6661 of 2016 (O&M)

The appellant-plaintiff has not been successful in claiming declaration to the preliminary decree dated 25.07.1996 of Executive Magistrate-cum-Distt. Development & Panchayat Officer, final order dated 21.12.2010 passed by SDM, in the proceedings under Sections 145/146 Cr.P.C and as well as possession of suit land described in the head note of the plaint.

It was alleged that suit land was *Jumla Mustarka Malkan Hasab Rasad Rakba* which was in cultivating possession of the plaintiff and

performa defendants No.39 to 41 and defendant no.33 as co-sharer but the mutation no.953 was incorrectly sanctioned in favour of Gram Panchayat Bhaupur. The Gram Panchayat attempted to take the forcible possession and in this regard, plaintiff and performa defendants filed a civil suit bearing No.408 of 1995 which was decreed on 28.10.1998 . Defendant no.40 also filed civil suit bearing no.390 of 1995 which was decreed vide judgment and decree dated 27.04.1998 and many other similar suits.

In order to wriggle out of the aforementioned decrees and dispossess the plaintiff, Gram Panchayat and defendants No.2 to 30 in collusion approached the Police Station, Israna and obtained baseless report under Sections 145/146 Cr.P.C. SDM, Panipat without any evidence attached the suit property, vide order dated 25.07.1996 appointed the receiver and thereafter, culminated into final order dated 21.12.2010, whereas, the plaintiff along with performa defendants was in settled possession of the suit land and the nature of the land as vested in the proprietors, could not have been sanctioned in favour of Gram Panchayat. Such mutations have already been set aside by this Court in case of “Jai Singh Vs. State of Haryana” and in view of judgment, the Chief Secretary had issued the letters to all revenue officers including the Deputy Commissioner to cancel the mutation entered on the basis of the Government letter and instead of doing so, SDM, Tehsildar and BDPO had embezzled the lease amount.

It is a matter of record that suit proceedings against the defendant nos.1 to 12, 14, 15, 17, 18 (a to e) and 19, 20, 25, 28 (b to d) and

27, 29 to 36, 39 to 41 were withdrawn vide order dated 02.05.2013 and the suit was only contested by defendants no.37 and 38.

The aforementioned suit was opposed by taking the objection of maintainability and jurisdiction of the Court as the plaintiff had alternative remedy under Section 13 of Punjab Village Common Land Act, 1961. There was no partition of suit land amongst the co-sharers and the land had been utilized by the inhabitants for common purposes i.e. grazing of animals. Owing to the apprehension of breach of peace at the instance of the plaintiff, proceedings under Sections 145/146 Cr.PC were initiated.

The plaintiff brought on record Ex.P1 to Ex.P7 and Mark A to Mark C, whereas, defendants examined Rajbir Singh, Sarpanch and closed the evidence. On preponderance of the evidence, the trial Court dismissed the suit and the plaintiff was also not successful before the Lower Appellate Court.

Mr. H.P.S.Ghuman, learned counsel appearing on behalf of the appellant-plaintiff submitted that Lower Appellate Court has committed illegality and perversity in rendering the findings as there was no reference to the jamabandi for the year 1986-87 which proved the plaintiff to be in cultivating possession of the land measuring 11 kanals 11 marlas as proprietor/co-sharer of *Jumla Mustarka Malkan Hasab Rasad Rakba*. The suit land did not vest with the Gram Panchayat and was owned by the proprietor. BDPO and SDM did not grant any opportunity of hearing, suit land, was thus, erroneously handed over to BDPO as receiver.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, witness of the plaintiff, PW1 specifically admitted that suit land was auctioned by the Gram Panchayat. The stray entries in the jamabandi would not confer the exclusive possession upon the plaintiff. Jamabandi for the year 1986-87 Ex.P1 reflected the entry as *Jumla Mustarka Malkan Hasab Rasad Rakba* but the latest revenue record has been prevented from the Court. The judgments and decrees, Ex. P3 to Ex.P7 are also of no help because plaintiff has not been found to be in possession of the suit land. In other words, plaintiff miserably failed to discharge the onus under Section 101 of Indian Evidence Act. In such circumstances, the Court below had no other option but to dismiss the 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 appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No