

In the High Court of Punjab and Haryana at Chandigarh

RSA- 4182 of 2014(O&M)

Date of Decision:3.12.2018

Raj Kumar and others

---Appellants

vs.

Rajbir and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Akshay K. Goel, Advocate
for the appellants

Mr. Alok Jain, Advocate
for respondents No. 1 to 3

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgments and decrees passed by the courts whereby suit for declaration and permanent injunction filed by Har Chand (since deceased) represented by his LRs and Ishwar son of Laxman was dismissed by the trial court vide judgment and decree dated 13.6.2011 and the plaintiffs remained unsuccessful before the first Appellate Court that affirmed findings of the trial court.

The appellants claimed that they are joint tenants in possession of agricultural land measuring 42 kanal 5 marlas, situated in village Dharwanwas Tehsil Tosham District Bhiwani, detailed in para 1

(unnumbered) of judgment of the trial court vide jamabandi for the year 2001-02 and entries in khasra girdawari in the name of respondents-defendants from kharif 1993 till date and entries in the column of cultivation of jamabandi for the year 1996-97 to 2001-02 are wrong, illegal, without jurisdiction and liable to be corrected. They also prayed for injunction restraining the respondents from interfering in joint possession as tenants over the land in dispute.

There is no dispute between the parties that Bhuru had three sons namely Kanhi Ram, Hari Chand and Laxman. Laxman died and left behind Ishwar, his son (plaintiff No. 2). Kanhi Ram died leaving behind three sons namely Hawa Singh, Mange and Mahabir. Mange and Mahabir are defendants No. 1 and 2. Hawa Singh died and Manoj defendant No. 3 is his son. Bhuru was a tenant on land measuring 42 kanal 5 marlas at nominal lagan of Rs. 13/- per annum.

The case set up by the plaintiffs is that after death of Bhuru, defendants No. 1 to 3 in collusion with each other had got their names entered in the girdawari for kharif 1993 as successors of Bhuru. All the male legal descendants of Bhuru inherited tenancy rights under the Punjab Security of Land Tenures Act read with the Punjab Tenancy Act. It is averred that entries showing the defendants only as tenants from kharif 1993 till date are wrong, without jurisdiction and without notice to the plaintiffs, thus, not binding upon their rights. After death of Bhuru, plaintiffs alongwith defendants are jointly cultivating the land. The entries in the column of cultivation showing the defendants only as tenants are wrong, null and void. Plaintiffs came to know about the wrong entries when the

defendants refrained the plaintiffs to cultivate the land.

Defendants-respondents filed the written statement raising preliminary objections inter alia locus standi or cause of action to file the suit and maintainability of the suit. It is pleaded that after death of Bhuru son of Dhanna who was gair marusi tenant under the owners Smt. Bhani etc., Har Chand plaintiff No. 1 and Laxman father of plaintiff No. 2 relinquished their right of tenancy in favour of defendants by furnishing affidavit dated 7.4.1993 and Rapat No. 29 dated 5.10.1993 was also entered. After spot verification by the revenue officer, entries in the revenue record were changed by inserting the defendants as gair marusi tenants over the land in dispute. Defendants were duly reflected in the column of cultivation in the subsequent jamabandis for the years 1996-97 and 2001-02. Suit for declaration without possession is not maintainable. Plaintiffs are estopped by their deeds and conduct from filing the suit. It has further been averred that the suit is bad on account of non-joinder and mis-joinder of parties; plaintiffs having not come to the court with clean hands and the suit being hopelessly time barred.

The controversy between the parties led to framing of following issues by the trial court:-

1. Whether the plaintiff and defendants are joint tenants in possession of the agricultural land as detailed and described in the head note of the plaint?OPP
2. Whether the entries in the khasra girdawari in the name of defendants from 1993 till date and entries in column of cultivation in revenue record as detailed and described in the

head note of the plaint is wrong, illegal and liable to be set aside?OPP

3. Whether the plaintiff is entitled for a decree of permanent injunction restraining the defendants from interfering in the joint possession as tenants over the suit property?OPD
4. Whether the plaintiff has not come to the court with clean hands?OPD
5. Whether the suit of the plaintiff is not maintainable in the present form?OPD
6. Whether the plaintiff is stopped by his own act and conduct from filing the present suit?OPD
7. Whether the suit is barred by limitation?OPD
8. Whether the suit of the plaintiff is not properly valued for the purpose of court fee?OPD
9. Relief.

To prove their case, one of the LR's of Har Chand namely Raj Kumar appeared in the witness box and they examined Balwan PW2. To rebut evidence of the plaintiffs, Mahabir defendant No. 2 appeared in the witness box and they examined Dharambir DW2.

Having heard counsel for the parties in the light of oral and documentary evidence on record and rival submissions made by counsel for the parties, the trial court answered issues No. 1 to 3, taken up jointly, against the plaintiffs whereas issues No. 4, 5, 6 and 8, taken up jointly, were answered against the defendants and issue No. 7 was determined against the plaintiffs. Eventually, suit filed by the plaintiffs was dismissed leaving the

parties to bear their own costs.

As has been noticed hereinbefore, the appeal preferred by unsuccessful plaintiffs did not find favour with the Additional District Judge, Bhiwani and findings recorded by the trial court were affirmed.

Counsel for the appellants has urged that the judgments/decrees passed by the courts suffer from patent error and perversity as the courts failed to appreciate the factual and legal aspects in right perspective by ignoring the settled position in law. It is argued with vehemence that there is no dispute between the parties so far as entitlement of the plaintiffs and defendants to inherit tenancy rights in suit land left behind by Sh. Bhuru, predecessor in interest of the parties. It is further argued that the respondents-defendants have sought to deny the right of tenancy by placing reliance upon affidavit dated 7.4.1993 purported to be executed by Har Chand plaintiff No. 1 (since deceased) and Laxman, father of plaintiff No. 2. It has been argued that neither the respondents have been able to prove affidavit dated 7.4.1993 in accordance with law nor they have produced Rapat No. 29 dated 5.10.1993, referred to in the written statement. It has been argued that plaintiffs being co-tenants in land measuring 42 kanal 5 marlas are entitle to get the revenue entries corrected by recording them as joint tenants with defendants-respondents.

Counsel would urge that revenue entries neither create nor extinguish substantive rights of the parties. Revenue record is prepared for fiscal purposes and the same is not a document of title. According to counsel, once plea taken by the respondents in regard to relinquishment of tenancy rights by Har Chand and Laxman on the basis of affidavit dated

7.4.1993 is rejected, as a natural corollary, the plaintiffs would become joint tenants in the disputed land being successors in interest of Sh. Bhuru.

Counsel representing the respondents has supported consistent findings recorded by the courts whereby suit filed by the appellants-plaintiffs has been dismissed. It is argued that plea raised by the plaintiffs that they are in cultivating possession of suit land does not get established from oral or documentary evidence produced on record. It is further argued that as the appellants-plaintiffs have sought correction of revenue entries since the year 1993 and the present suit has been filed in August 2006, the same is clearly barred by limitation, as has been so held by the courts.

With regard to affidavit dated 7.4.1993 relied upon by the respondents-defendants, it is argued that the present suit has been filed by the plaintiffs after death of Laxman and Har Chand died during pendency of the suit. To prove affidavit, the defendants examined Dharambir DW2 to prove signatures of Het Ram Lambardar on affidavit Mark 'A'. It is further argued that since both the executants of affidavit have passed away and the respondents have proved signatures of Lambardar Het Ram by examining his son, there could be no other evidence to prove affidavit mark 'A'. In addition, it is argued that in cross examination of Raj Kumar, it has been proved that the plaintiffs were aware of the affidavit but for the reasons best known, they did not challenge validity of affidavit dated 7.4.1993, therefore, appellants cannot be heard to say that Har Chand and Laxman did not relinquish their tenancy rights in suit land. In the alternative, counsel would argue that as the affidavit is a statement made by dead persons, the same is admissible under Section 32 of the Indian Evidence Act. The last

submission made by counsel is that the appellants have miserably failed to prove that they are in cultivating possession of suit land, therefore, simpliciter suit for declaration without claiming possession is hit by the proviso appended to Section 34 of the Specific Relief Act, 1963.

I have heard counsel for the parties, perused the paper book particularly the judgments impugned and records.

As has been noticed hereinbefore, there is no dispute between the parties that they are successors in interest of Sh. Bhuru, erstwhile tenant of land measuring 42 kanal 5 marlas. The entire controversy in the present case revolves around affidavit dated 7.4.1993 purported to be executed by Sh. Har Chand died during pendency of the suit and represented by his LRs and Laxman predecessor in interest of Ishwar plaintiff No. 2.

The second question would be the issue of limitation raised by the respondents-defendants.

Undisputedly, affidavit dated 7.4.1993 has not been proved by the respondents, in accordance with law. The respondents only examined Dharambir to prove that the affidavit bears signatures of Sh. Het Ram Lambardar, his father. Counsel for the respondents has failed to advance arguments as to how testimony of Dharambir DW2 is sufficient to prove the affidavit Mark 'A'. There are no signatures/thumb impressions on first page of affidavit Mark 'A'. Nothing has been mentioned either above or below signatures of Het Ram Lambardar as to the purpose for which he appended his signatures on 6.4.1993. The affidavit appears to have been attested on 7.4.1993. If Sh. Het Ram Lambardar had appended his signatures on 6.4.1993, it becomes certain that the affidavit was not attested by Executive

Magistrate on identification of Het Ram.

The contention raised by counsel for respondent that they were unable to lead further evidence to prove affidavit Mark 'A' will not enure to benefit of respondents. As per settled position in law, a person can not derive advantage of a document unless it is proved in accordance with law except in case of there being no dispute about the same.

This apart, there is nothing on record suggestive of the fact that the respondents called upon the plaintiffs to disclose if Laxman and Har Chand ever executed any document prior to their death, in order to get compared the disputed thumb impressions/signatures on the affidavit with the standard signatures/thumb impressions of Har Chand and Laxman. Not only this, the plaint bears thumb impressions of Har Chand son of Bhuru (died during pendency of suit) but the respondents never got the thumb impressions on the plaint compared with the thumb impressions on affidavit Mark 'A'. The first Appellate Court has held that affidavit can be considered in the light of statement of Dharambir DW2 alongwith revenue record placed on file which shows that the respondents are in possession of land in dispute. However, both the courts have committed an error rather perversity by relying upon affidavit Mark 'A'. No sooner the respondent failed to prove this document, in accordance with law, their plea qua relinquishment of tenancy rights can not be sustained and resultantly the appellants become joint tenants in suit land irrespective of whether they are in actual possession or not.

The courts have also failed to appreciate that none of the revenue documents, relied upon by the respondents, makes reference to

affidavit dated 7.4.1993. As such, it is difficult to accept contention of the respondents-defendants that revenue entries showing them in possession to the exclusion of appellants have rightly been recorded by the revenue authorities. Rapat No. 29 dated 5.10.1993, referred to in the written statement, has not seen light of the day. An adverse inference is to be drawn against the respondents that either no such rapat actually exists in revenue records or if so exists and is produced, the same would have gone against the defendants-respondents.

Counsel for the respondents has tried to find fault with the case set up by the plaintiffs in view of the fact that they have not challenged validity of affidavit dated 7.4.1993 despite the fact that they were aware that no such affidavit had been executed by Har Chand and Laxman. This argument of counsel is misconceived and liable to be rejected. Raj Kumar in his cross examination has stated that affidavit dated 7.4.1993 Mark 'A' was not given by Har Chand and Laxman in favour of Mange, Mahabir and Manoj for changing girdawari of land in question in their favour. He has further stated that Laxman and Har Chand told that they have not given any affidavit. There is nothing in the statement of Raj Kumar that he knew about existence of affidavit dated 7.4.1993 or Laxman and Har Chand had told that this particular affidavit dated 7.4.1993 was not given by them, therefore, there was no occasion with the plaintiffs to challenge affidavit dated 7.4.1993 in the present suit. Similarly, arguments advanced by counsel for the respondents with regard to affidavit being admissible in evidence under Section 32 of the Evidence Act is not meritorious. Counsel for the respondents either ignorantly or mischievously has raised this

contention despite his knowing fully well that affidavit has not been proved, in accordance with law, therefore, its contents cannot be read into evidence. The question of invoking Section 32 of the Evidence Act would have arisen only if the affidavit has otherwise been proved to be executed by Har Chand and Laxman.

The trial court answered issue No. 7 to the effect that the suit is barred by limitation. As findings of the trial court on issues No. 1 and 2 cannot be allowed to sustain in view of discussion made hereinbefore, as a natural consequence, the plaintiffs become joint tenants in joint possession of suit land. There cannot be any dispute that a joint owner/joint tenant can seek declaration of his rights of co-ownership/co-tenant without attracting the bar of limitation unless the other party is able to oust him from his right on a premise known to law. In the instant case, plea of the respondents-defendants with regard to relinquishment of rights of tenancy by Har Chand and Laxman has been rejected. The revenue entries neither create nor extinguish substantive rights. In this view of the matter, it can be held that cause of action for the purpose of Article 58 of the Limitation Act accrued only when there was clear and unequivocal threat to infringe right of the appellants. In this view of the matter, findings recorded by the courts with regard to suit being barred by limitation cannot be allowed to sustain and accordingly set aside.

To be fair to the respondents, counsel has made a submission that simpliciter suit for declaration without claiming possession is not maintainable. Once the appellants become joint tenants in suit land and they would be deemed to be in possession of every inch of land of joint

tenancy, in the eye of law, therefore, it is difficult to accept contention of the respondents that simpliciter suit for declaration is not maintainable. However, in view of the fact that the appellants have failed to prove their being in actual possession of any part of land of joint tenancy, they are not entitle to seek injunction against their co-tenants/joint tenants.

In view of what has been discussed hereinbefore, the appeal is partly allowed. Judgments and decrees passed by the courts are set aside and suit filed by the appellants-plaintiffs is decreed to the effect that the appellants alongwith defendants are joint tenants in possession of agricultural land measuring 42 kanal 5 marlas and entries in the jamabandi from 1996-97 onwards recording the defendants alone to be tenants in suit land are liable to be corrected to the effect that plaintiffs and defendants are joint tenants in the land in question. The parties are left to bear their own costs.

(Rekha Mittal)
Judge

3.12.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No