

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

RSA No. 2760 of 2017(O&M)

Date of decision: 19.4.2018

Banarsi Dass (since deceased) through his legal heir Kapoor Chand and
othersAppellants

VERSUS

Surinder Pal @ Gora and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Anil Kumar Garg, Advocate for the appellants.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the respondents/defendants from interfering in peaceful cultivating possession of the appellants over the suit land measuring 177 kanal 8 marla, detailed in head-note of the plaint has been dismissed by the trial Court and findings recorded by the trial Court have been affirmed in appeal.

Counsel for the appellants would argue that the suit land is the ownership of Provincial Government and the appellants staked their claim for grant of injunction primarily on the basis of possession of suit land and injunction has been sought against private persons and not owner of the land in question. It is further argued that the appellants produced on record copies of jamabandis for the years 1971-72 Ex.P1, 1976-77 Ex.P2, 2011-

12 Ex.P3 in order to prove that in the previous two jamabandis, land is recorded to be in possession of predecessors-in-interest of the appellants and entry in the name of Drain Department reflected in the jamabandi for the year 2011-12 is not based upon any rapat or attestation by Lambardar or Panch of the village, therefore, jamabandi for the year 2011-12 is not sufficient to negate plea of the appellants with regard to their possession over the suit land and entitlement to get injunction against the respondents/defendants restraining them from interfering in possession of suit land except in due course of law. It is further argued that the Courts committed gross error rather perversity by non-suiting claim of the appellants/plaintiffs despite the fact that evidence adduced by the respondents/defendants by examining Surinder – DW-1 and Hushan Lal DW-2 is no rebuttal/counter to case of the appellants/plaintiffs as Surinder DW-1 had categorically stated that the defendants are neither the owner nor in possession of the suit land.

I have heard counsel for the parties, perused the paper-book particularly the judgments passed by the Courts.

The first Appellate Court in para 12 of the judgment has noticed contention of counsel for the appellants that Bachan Singh, Kaka Singh, Banarasi Dass, Bawa Singh are recorded to be in possession of the suit land in jamabandi for the years 1971-72 and 1976-77. Banarasi Dass son of Bachna, one of the appellants/plaintiffs appeared in the witness box and recorded his examination in chief but thereafter did not cause appearance for cross examination. Similarly, Kashmira PW-2 tendered his affidavit Ex.PB but did not appear for cross examination. In the given scenario, evidence by way of examination in chief of Banarasi Dass and

Kashmira cannot be read into evidence. None of the other plaintiffs/appellants appeared in the witness box to prove that the plaintiffs are in possession of the suit property after the death of Bachna, Kaka Singh and Bawa Ram whose names figure in the jamabandi for the years 1971-72 and 1976-77.

Counsel for the appellants made a submission before the Appellate Court that in the jamabandi for the years 1981-82, name of ancestors of the appellants were not recorded by Halqa Patwari but possession continued to be the same till date. Admittedly, predecessors in interest of the appellants nor the appellants ever initiated any proceedings for correction of revenue record since the year 1981-82. Counsel for the appellants has failed to point out if appellants are recorded to be in possession of suit land in any document maintained by revenue authorities much less jamabandi to which a presumption of correctness is available. Under the circumstances, appellants failed to lead cogent and convincing evidence to establish their plea that they are in possession of the suit land, admittedly, owned by the Provincial Government. It appears that the appellants, in connivance with the respondents, filed the suit for permanent injunction qua their possession of suit land to obtain a decree for use in future against the Provincial Government. No doubt, the appellants filed a simplicitor suit for injunction against the respondents/defendants who allegedly threatened to interfere in possession of the appellants/plaintiffs but as there is hardly any contest by the respondents/defendants, it goes a long way to establish that the appellants put an effort to get a decree of injunction at the back of its true owner. In this view of the matter, I do not find an error much less illegality in consistent findings recorded by the

Courts below warranting intervention in exercise of jurisdiction in Regular
Second Appeal.

For the foregoing reasons, the appeal fails and is accordingly
dismissed in limine. No order as to costs.

APRIL 19, 2018
'D. Gulati'

Whether speaking/reasoned : yes/no
Whether reportable : yes/no

(REKHA MITTAL)
JUDGE