

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

Regular Second Appeal No. 6215 of 2018(O&M)

Date of Decision: November 26 , 2018.

Kanhya Lall

..... APPELLANT (s)

Versus

Jai Singh

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Arjun Lakhanpal, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellant/defendant is aggrieved of judgments and decrees dated 01.09.2014 and 31.08.2018 passed by the learned Civil Judge (Junior Division), Hisar and the learned Additional District Judge, Hisar, respectively, whereby suit for possession filed by the respondent/plaintiff was decreed.

Brief facts necessary for the adjudication of the case are that, respondent/plaintiff -Jai Singh filed a suit for possession of the house constructed over the land as described in the plaint. It was pleaded that the suit land as well as the residential house belong to Smt. Manjeet Kaur etc., who were the owners of the land in question. Plaintiff claimed that he was cultivating the said land as a

Gair Marusi tenant on Batai Tihai Basreh Khata No.39. He claimed possession of the suit land being a tenant. It was further pleaded that the appellant/defendant was the real brother of the plaintiff. The plaintiff had constructed a residential house marked as ABCD in the site plan in the year 2006-07. He resided in the said house upto December 2011 when he shifted with his family to Siwani. Taking undue advantage of absence of the plaintiff, the defendant was alleged to have illegally occupied the said house without any right, title or interest over the same. Thereafter, the defendant despite being requested a number of times to hand back the suit land and the residential house, refused. Hence, the suit was filed.

Appellant/defendant resisted the suit. Written statement was filed by him raising various preliminary objections, averments on merits were controverted. Appellant/defendant pleaded that the house in question was a very old one wherein he was residing as its owner. Dismissal of the suit was prayed for.

From the pleadings of the parties, the following issues were framed by the learned Tribunal:-

1. Whether the plaintiff is in cultivating possession over the land measuring 19 kanals 05 marlas as per jamabandi for the year 2005-06 fully detailed in the head note of the plaint as gair marusi batai tihai basreh khata No.39 of Smt. Manjeet Kaur and other owners on the grounds as alleged? OPP
2. Whether the plaintiff has constructed a house in the abovesaid land in the year 2006-2007 and he resided in the same for some time and in his absence the defendant has illegally possessed the said house? OPP
3. If issues No.1 and 2 are decided in favour of the plaintiff whether the plaintiff is legally entitled to get back the possession of the abovesaid properties? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether plaintiff has no locus standi and cause of action to file

- the present suit? OPD
6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
 7. Whether the suit is bad on account of mis-joinder and non-joinder of necessary parties? OPD
 8. Relief.

Evidence was led by both the parties to substantiate their respective claims. The learned trial court decreed the suit filed by the plaintiff subject to payment of court fee on the market value of the house in question. The respondent/plaintiff was held entitled to possession of the land in question alongwith the house constructed thereon as reflected in the site-plan. Appeal preferred by the appellant/defendant was also dismissed by the learned Additional District Judge, Hisar vide judgment and decree dated 31.08.2018. Aggrieved therefrom, present appeal has been filed by the appellant/defendant.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in decreeing the suit of the respondent/plaintiff. In fact, learned first appellate court has afforded a relief which was not even sought. The respondent/plaintiff, it is argued, claimed himself to be the owner of the property in question, whereas he was a Gair Marusi tenant on Batai Tihai Basreh in the year 1986. He left the village in the year 1992 and the house in question was, in fact, constructed by the appellant in the year 1993. Appellant/defendant has been living in the said house since then. Mere production of the electricity bills by the plaintiff does not in any manner prove that the plaintiff constructed the house in the year 2006-2007 which remained in his possession thereafter. It is thus prayed that both the judgments and decrees dated 01.09.2014 and 31.08.2018 passed by the learned Civil Judge (Junior

Division), Hisar and the learned Additional District Judge, Hisar, respectively, be set aside, consequently, dismissing the suit filed by the plaintiff throughout.

I have heard learned counsel for the appellant and have gone through the photocopy of the record produced in Court by him today.

At the very outset, it is relevant to note that the respondent/plaintiff in this case does not claim possession of the land/residential house as its owner. It is specifically pleaded that the land in question was owned by Smt.Manjeet Kaur and others and the plaintiff was a Gair Marusi tenant therein on Batai Tihai Basreh Khata No.39. The plaintiff has proved on record jamabandi for the year 2005-2006 (Ex.P1) wherein he is mentioned as a tenant Gair Marusi on Batai Tihai Basreh and Manjeet Kaur and others were mentioned as owners of the land in question. Khasra girdwari (Ex.P2) reflects the plaintiff as cultivator of the land and Smt. Manjeet Kaur etc. its owners. Electricity bills (Ex.P3) in the name of the plaintiff have been proved.

The house in question is claimed to have been constructed in the year 2006-2007 wherein the plaintiff alongwith his family resided uptill December 2011 when he shifted to Siwani where he was working as a Cultry Patwari. The appellant/defendant on the other hand claims that he is residing in the said house since 1993 and entry of Gair Marusi tenant on Batai Tihai in the Jamabandi (Ex.P1) is incorrect. It is a matter of record that electricity bills of the said house were duly produced by the plaintiff. DW1 Kanahiya Lal has admitted the electricity connection of the house to be in the name of the plaintiff. Appellant/defendant though claiming to be the owner in possession of the property in question has failed to produce any document on record to even

suggest that he was owner of the property in question. Appellant tried to set up a case that he constructed the house, but there is no such evidence on record to this effect. Moreover, there is no such pleadings to that effect that the appellant/defendant had constructed the house in question. Stray observations by the learned trial court that the plaintiff was the owner of the house in question cannot be of any avail to the appellant/defendant in the facts and circumstances of the case. Such an observation, needless to say, cannot confer any right of ownership upon the plaintiff which he has not even claimed.

No other argument has been raised.

Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 01.09.2014 and 31.08.2018 passed by the learned Civil Judge (Junior Division), Hisar and the learned Additional District Judge, Hisar, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

November 26 , 2018.
'om'

(**LISA GILL**)
JUDGE

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