

RSA-769-1982 (O&M)

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

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Date of decision : 24.01.2019

Rajinder Singh (deceased) through LRs and others

... Appellants

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Rapri, Advocate
for the appellant.

Mr. Sandeep Mann, AAG, Punjab.

Mr. Jai Bhagwan, Advocate
for respondent Nos.3 to 8.

AMIT RAWAL, J. (ORAL)

CM-3641-C-2018

For the reasons stated in the application, amended grounds of appeal is taken on record, subject to all just exceptions.

CM stands disposed of.

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The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the appellant-plaintiff for possession of agricultural land measuring 35 kanals 3 marals, against the defendants, has been dismissed by the trial Court and affirmed in appeal.

The plaintiffs-LRs of Bhagwan Singh claimed possession on the premise that Jaimal Singh, who was the owner of the land, had vide sale

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deed dated 07.06.1920, registered on 13.07.1920, sold the land to Narain Singh. Narain Singh died in the year 1923, living behind three sons, namely, Bhagwan Singh, Bishan Singh and Bakhtawar Singh. Bakhtawar Singh died in the year 1934, survived by his son Jagjiwan Singh, whereas Bishan Singh, died issueless and his wife married with Kabul Singh and Balbir Singh was borne out of union of Ajaib Kaur and Kabul Singh. Mutation of the aforementioned sale deed was not effected and continued in the name of Jaimal Singh, who died in the year 1982, as a result thereof, the property vide order dated 20.11.1957 was escheated to the provincial Government Punjab. The plaintiffs and defendants No.8 to 10, remained in possession of the land, but they were allegedly dispossessed in the year 1969 by the revenue officers, in these circumstances, the suit, aforementioned, was filed on 15.06.1974 by serving a legal notice dated 17.07.1971.

The State of Punjab/defendant contested the suit and alleged that possession was never handed over to Narain Singh by Jaimal Singh and supported the order dated 20.11.1957.

Defendant No.2 opposed the suit, but admitted that Jaimal Singh was the owner of the land, in dispute. Rest of the paras were denied for want of knowledge. It was stated that mutation of inheritance of Jaimal Singh was decided on 20.12.1957 by the Assistant Collector 1st Grade, in favour of the Government and this fact was in the knowledge of the plaintiffs and defendant Nos.8 to 10, but no action was taken.

Since the parties were at variance, the following issues were framed by the trial Court:-

1. Whether Jaimal Singh sold away the land mentioned in para

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- No.1 of the plaint to Narain Singh son of Attar Singh by vide registered sale deed dated 7.6.1920? OPD*
- 2. Whether plaintiffs and defendants Nos.9 and 10 are the heirs of Narain Singh deceased vendee, according to share mentioned in para No.10 of the plaint? OPP*
 - 3. Whether land mentioned in the heading of the plaint was allotted in lieu of land purchased by Narain was allotted in lieu of land purchased by Narain Singh as mentioned in para No.1 of the plaint? OPP*
 - 4. Whether the plaintiffs and defendant No.9 and 10 are entitled to the possession of the land in suit? OPP*
 - 5. Whether notice under Section 80 CPC, was served on the State before filing the present suit? If no so, its effect? OPD*
 - 6. Whether the suit is time barred? OPD*
 - 7. Whether the plaintiffs have no cause of action? OPD*
 - 8. Whether the plaintiffs are estopped from filing the present suit? OPD*
 - 9. Whether the suit in the present form is not maintainable ? OPD*
 - 10. Whether the suit is not properly valued for purposes of court fee and jurisdiction? OPD*
 - 11. Relief.*

The plaintiff in support of the pleadings examined himself as PW1, Som Nath Retired Patwari as PW2, Kishan Chand Patwar Moharar as PW3, Bharpur Singh as PW4 and in rebuttal Mohinder Singh as PW5, Bachan Singh as PW6, Bant Singh as PW7 and tendered in evidence varous documents (Ex.P1, Ex.PX3 and Ex.PX4) and in additional evidence Ex.P18 and Ex.P19, whereas the defendant examined Karnail Singh as DW1, Kartar Singh as DW2, Bhag Singh DW3, Iqbal Singh as DW4 and brought on record various documents (Ex.D1 to D8).

On the basis of preponderance of the evidence, the trial Court

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dismissed the suit by holding that the plaintiffs failed to bring on record khasra numbers for proving the identity the property. The appeal laid before the lower Appellate Court was also dismissed.

Learned counsel for the appellants-plaintiffs submitted that the judgments and decrees, under challenge, are not sustainable in the eyes of law as the order dated 20.11.1957 was passed at the back of Jaimal Singh or his LRs, for, khasra girdawaris reflected the possession of the plaintiffs. Any order without jurisdiction can be challenged at any stage, thus, the suit could not have been dismissed being barred by law of limitation. The registered sale deed was never challenged, therefore, there is presumption of truth. The sale deed conferred the ownership upon them from Narain Singh i.e. their predecessor. Specific challenge to the order of 1957, thus, could not have been a ground for non-suiting the plaintiff. Jaimal Singh did not leave any property. All these factors, if read in cumulative, lead to an irresistible conclusion that there is illegality and perversity in the judgments and decrees, under challenge.

Learned counsel for the respondents-defendants supported the judgments and decrees of the Courts below by submitting that the sale deed was pertaining to the khasra number of pre-consolidation and *khatauni paimaish* was not brought on record, much less, proceedings of the consolidation, except list of consolidation which was not sufficient and requirement of law. The suit *ex facie*, in the absence of challenge to the order of 1957, was not maintainable. *Khatauni paimaish* reflected only the old khasra numbers and not new khasra numbers. The plaintiffs miserably failed to discharge the onus, thus, urges this Court for dismissal of the present regular second appeal.

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I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following "Substantial Questions of Law" arise for determination of this Court:-

- 1. Whether the suit of the plaintiffs filed in 1974 claiming possession against the defendants, in the absence of challenge to the order dated 20.11.1957, was maintainable or not?*
- 2. Whether the plaintiffs failed to discharge the onus as per the provisions of Section 101 of the Indian Evidence Act, or not?*
- 3. Whether the suit was barred by law of limitation, in view of findings on issue No.6, or not?*

The plaintiffs though brought on record certified copy of sale deed (Ex.P1), which pertained to the old khasra numbers and *khatauni paimaish* (Ex.PW3/D) reflected the khasra Nos.377, 379, 380, 381, 382, 367, 269, 239, 267, 269 and new khasra numbers were reflected in jamabandi (Ex.PW3/E). There is no connection of the old khasra numbers with the new khasra numbers as to whether subject matter of the suit property in possession of the defendants was the same, as referred to in the sale deed. In my view, the plaintiffs miserably failed to prove the identity of the property. There was no challenge to the order of 1957, even if, the plaintiffs had acquired the knowledge few days before filing of the suit by bringing the suit within the provisions of Article 59 of the Limitation Act. The best possible evidence, which has not been seen the light of day, was *Naksha Haqdarbar*, which would have reflected the previous khasra numbers and assignment of new khasra numbers. The jamabandi did not reflect the name of predecessor-in-interest of the appellants-plaintiffs. In

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the absence of the same, the plaintiffs could not lay the claim of possession without identification of the suit property. It is not deciphered as to whether the defendants were in the capacity of unauthorized owner or in their own capacity, whereas the defendants alleged themselves to be allottees of Nazoor land, by the Department.

Keeping in view the aforementioned facts, the substantial questions of law, as noticed above, are answered against the appellants-plaintiffs and in favour of the respondents-defendants. I do not find any illegality and perversity in the judgments and decrees, under challenge. Accordingly, the present regular second appeal is dismissed.

24.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**