

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

Date of decision: 1.10.2019

1.

RSA No.1262 of 1991(O&M)

Jangir Singh (since deceased) through LRsAppellant

VERSUS

Ujjagar Singh (since deceased) through LRs and othersRespondents

2.

CRM-M No.21407 of 2009(O&M)

Pargat SinghPetitioner

VERSUS

State of Punjab and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rakesh Gupta, Advocate for the appellant.

Mr. R.S. Dhaliwal, Advocate for the petitioners in CRM-M
No.21407 of 2009.

Mr. Arvind Mittal, Advocate for respondents.

Mr. A.A. Pathak, Addl. A.G. Punjab.

REKHA MITTAL, J.

This order will dispose of RSA No.1262 of 1991 and CRM-M
No.21407 of 2009 as decision in RSA has material bearing qua
adjudication of CRM-M No.21407 of 2009. For facility of reference, facts
are taken from RSA No.1262 of 1991.

Challenge in the present appeal has been directed against
concurrent findings recorded by the Courts whereby suit for permanent

injunction restraining the defendant/appellant from interfering in possession of respondent upon land measuring 40 kanals, detailed in headnote of the plaint situated at village Rogla as per jamabandi for the year 1982-83, was decreed by the trial Court vide judgment and decree dated 04.12.1987 and appeal preferred by unsuccessful appellant/defendant was dismissed by the Additional District Judge, Sangrur.

The facts relevant for disposal of present appeal are that as per allegations raised by the respondent/plaintiff, Mehru son of Jaimal and Sham Kaur widow of Gajjan Singh were owners of land measuring 313 kanal 8 marlas in equal shares. Mehru sold 67 kanal 14 marlas of land to Baldev Singh son of Natha Singh vide registered sale deed dated 02.11.1978. The respondent is in exclusive possession of suit land since 1982 as a tenant under Mehru and Sham Kaur. Jangir Singh – appellant alleged himself to have purchased land from Sham Kaur but he never came in possession of suit land.

The appellant/defendant filed the written statement raising preliminary objections that the suit is not maintainable as respondent has not mentioned the terms and conditions under which he is in possession of the suit land. Sham Kaur was unheard of for the last more than 30 years and he (appellant) succeeded to share of Sham Kaur and mutation No.4438 dated 16.07.1984 was sanctioned in this regard. The answering defendant is in possession of the suit land through his son and Mukhtar-E-Aam Major Singh.

The respondent/plaintiff filed replication and re-asserted his stand taken in the plaint.

The trial Court framed issues, noticed in para 4 of the judgment of said Court. The respondent/plaintiff examined Shakti Kumar PW-1, Harcharan Singh PW-3, Harnek Singh PW-4, Harnam Singh PW-5 and himself appeared in the witness box. On the other hand, the appellant examined Major Singh, his Mukhtar-E-Aam DW-1, Chhotu Singh DW-2, Gurdev Singh DW-3 and Chet Singh DW-4.

The trial Court while deciding issue No.1 rejected plea of the respondent/plaintiff that he is in possession of the suit land either as a tenant or in terms of agreement to sell but he is held to be in possession of suit land unauthorizedly and accordingly the issue qua possession of suit land was determined. In view of findings on issue No.2 that even a person in unauthorized possession of land cannot be allowed to be dispossessed by use of force and he can be dispossessed only according to due process of law, suit for injunction was decreed restraining the defendant/appellant from interfering in peaceful possession of respondent over the suit land or dispossessing him forcibly and without due process of law. As has been noticed hereinbefore, the judgment and decree passed by the trial Court was affirmed in appeal by the Additional District Judge, Sangrur as the Court affirmed findings of the trial Court with regard to possession of suit land by the respondent but negated his plea of tenancy.

Counsel for the appellant has vehemently argued that at the initial stage of the proceedings, the respondent/plaintiff raised a categorical plea that he is in possession of suit land since 1982 as a tenant under Mehru and Sham Kaur. Later, he filed an application for amendment of the plaint to withdraw his plea of tenancy and asserted his possession under agreement of sale purported to be executed by Sh. Mehru in the year

1981 but the application for amendment was rejected by the trial Court and the order has attained finality. It is further argued that in the jamabandi for the year 1982-83, there is no reference that Ujjagar Singh came in possession of suit land on the basis of agreement to sell. On the contrary, he is shown to be in possession as *gair marusi* but there is no entry in column No.9 with regard to payment of rent etc. It is further argued that in view of contradictory stand taken by the respondent/plaintiff coupled with absence of basis in regard whereof Ujjagar was recorded to be in possession of suit land, the Courts have committed a serious error rather perversity by accepting claim of the respondent/plaintiff for grant of discretionary and equitable relief of injunction.

Another submission made by counsel is that as Sh. Mehru was not left with any ownership right in land measuring 313 kanal 8 marlas jointly owned by Mehru and Sham Kaur by the time the purported agreement of 1981 was allegedly executed by him in favour of the respondent, the respondent otherwise cannot raise a plea that he came in permissive possession of suit land. It is argued that with regard to inheritance to estate of Sham Kaur who was not heard of for the last about 30 years before sanction of mutation, mutation No.4438 dated 16.07.1984 was sanctioned in favour of the appellant. It is further argued that the appellant has filed an application seeking permission to adduce additional evidence to place on record the documents with regard to correction of khasra girdawari and entries in the revenue records qua possession of suit land in favour of appellant Jangir Singh.

The last submission made by counsel is that a stray entry in the jamabandi for the year 1982-83 reflecting possession of

respondent/plaintiff cannot be made the basis for granting relief of permanent injunction. In support of his contention, he has relied upon Division Bench judgment of this Court **Tansukh and others Vs. Financial Commissioner and Principal Secretary, Revenue Department, Government of Haryana and others, 2013(4) RCR (Civil) 942.**

Counsel representing the respondent/plaintiff, on the other hand, has supported consistent findings recorded by the Courts with the submission that findings based upon materials on record cannot be interfered with unless proved to be vitiated by perversity. It is further argued that parties have put up their warring claims in respect of possession of suit land and respondent has been held to be successful in proving his possession of the suit property and entitle to protect the same except in due course of law. It is further argued that plea of the appellant/defendant with regard to suit land being in possession of his son and Mukhtar-E-Aam Major Singh does not find corroboration from any documentary evidence prior to institution of the suit. Major Singh examined as an Attorney of the defendant was not even aware of khasra numbers of the land in question, sufficient to falsify and belie claim of the appellant who failed to appear in the witness box without any tangible explanation, therefore, an adverse inference is liable to be drawn against him. It is further argued that witnesses examined by the appellant to prove his possession by way of oral evidence have made contradictory statements with regard to the period since when the appellant is in possession of suit land and also failed to disclose khasra numbers of the said land or status of khasra girdawari entries in regard to the suit land. The last submission

made by counsel is that the appellant cannot derive any advantage to his contention from the documents sought to be produced by way of additional evidence as entry in khasra girdawari was corrected during pendency of appeal before the first Appellate Court, therefore, has no evidentiary value in the eye of law. In addition, it is submitted that even if plea of the respondent with regard to tenancy is found to be incorrect but as plea of appellant/defendant in respect of his possession of suit land has been found to be false, the Court has rightly allowed moulded relief in accordance with the facts ultimately found. For this purpose, reliance has been placed upon judgment of this Court **Kanwar Pal and another Vs. Om Parkash and others, 1985(1) PLR 320.**

I have heard counsel for the parties, perused the paper-book and records.

Indisputably, plea of the respondent/plaintiff with regard to his tenancy qua the suit land has not been accepted by the Courts. As a matter of fact, before commencement of trial, the respondent/plaintiff sought to withdraw his plea of tenancy by filing an application for amendment of the plaint alleging mistake of his counsel on the basis of entry of gair marusi in the revenue documents and raised claim qua possession under an agreement of sale but unfortunately the amendment was not allowed by the trial Court and the order has attained finality. Thus, evidence adduced by him to prove his agreement dated 22.05.1981 Ex.P1 or delivery of possession under the said agreement cannot be taken into consideration as the respondent was not permitted to raise pleadings with regard to agreement or his possession under the agreement. In the jamabandi for the year 1982-83 exhibited on record, Mehru and Sham

Kaur are recorded to be co-owners in column No.4 and respondent is recorded to be in possession being *gair marusi*. In the column pertaining to rent, there is no entry and as such, the Courts have rightly held that status of respondent, in view of jamabandi Ex.P3, is that of an unauthorized occupant. Once a person is recorded to be in possession as *gair marusi*, there is no question of recording any basis for his possession of suit land. In the khasra girdawari Ex.P4 from the year 1983 to 1985, the respondent/plaintiff is recorded to be in possession of suit land. Counsel for the appellant has failed to elicit any facts in cross examination of respondent/plaintiff on the basis whereof his testimony becomes doubtful or his credibility is impeached. The appellant has not produced jamabandi prior to 1982-83 to establish that appellant was recorded to be in possession of suit land, therefore, entry in jamabandi for the year 1982-83 cannot be branded as a stray entry, by relying upon judgment of this Court in **Tansukh and others' case** (supra).

Counsel for the appellant has not disputed that correction in khasra girdawari was made by Revenue Officer after determination of question of possession by the trial Court and during pendency of appeal. In the given circumstances, the appellant cannot derive any advantage of correction of khasra girdawari or subsequent entries to contend that entries in the documents Ex.P3 and P4 are stray entries, thus, liable to be ignored. This apart, correction of khasra girdawari despite the matter being pending before the first Appellate Court and decision on the question of possession in favour of the respondent by the trial Court go a long way to show that the appellant was desperate and hell-bent to seek entry of possession in his favour despite the fact that Revenue Officer was not competent to make

correction in jamabandi which lies within the domain of Civil Court. In this view of the matter, the appellant cannot find fault in finding of the Courts, on the basis of subsequent events sought to be pressed into service by filing the application for additional evidence.

The appellant did not appear in the witness box to counter case of the respondent and establish his plea of possession of suit land. As per plea in the written statement, the suit land is in possession of Major Singh Mukhtar-E-Aam and son of the appellant. Major Singh appeared in the witness box to support his cause qua possession of the suit land. In examination in chief, he has deposed contrary to plea in written statement that defendant is in possession of suit land. He did not state that he being Mukhtar-E-Aam of defendant is in possession of suit land. In cross examination, he again asserted that his father is in possession for 30-35 years and to get the girdawaris effected in his name there is a case pending. However, he has stated that he cannot tell khasra numbers of the land. The statement of Major Singh goes a long way to falsify and belie plea of the appellant in respect of his possession of suit land. As has rightly been argued by counsel for the respondent, in statements of witnesses examined to prove possession of the appellant, there are contradictions with respect to the period since when Jangir Singh is in possession of suit land and they also failed to disclose khasra numbers of the suit land.

Counsel for the appellant also made an attempt to refer to mutation No.4448 dated 16.07.1984 in respect of succession to Smt. Sham Kaur. Another litigation with regard to total land measuring 313 kanal 8 marlas was subject matter of RSA No.1968 of 1998 decided by this Court

vide judgment dated 05.10.2018. In the said case, this Court has held to the following effect:-

“As per plea of the respondent/plaintiff, Mst. Sham Kaur has not been heard of for the past about 32 years. As has been rightly argued by counsel for the appellant that till date, there is no declaration by a competent Court of law with regard to death of Mst. Sham Kaur. Even in the suit filed by respondent/plaintiff, he has not sought any such declaration with regard to death of Mst. Sham Kaur. Assuming that any such declaration is sought or can be granted in the present suit, the same would be effective from the date of filing of the suit in August 1986.”

In view of the above, the appellant cannot derive advantage to his contention from mutation No.4438 dated 16.07.1984.

As plea of the respondent in respect of his possession over the suit land has been consistently held in his favour by the Courts and I do not find any reason to interfere in the same, respondent cannot be non-suited on the ground of his failure to prove his plea of tenancy in the given circumstances that appellant also raised an equally false plea of possession and even tried to over-reach the proceedings pending before the Civil Court by getting correction in khasra girdawari from Revenue Officer and thereafter tried to take advantage of the same by filing application for additional evidence.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

Counsel representing the petitioner in CRM-M No.21407 of 2009 would state that in view of findings in RSA No.1262 of 1991, nothing survives for consideration of this Court. Accordingly, CRM-M No.21407 of 2009 also stands disposed of.

OCTOBER 1, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no