

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

Date of decision: 19.7.2019

1. **RSA No.1305 of 2019(O&M)**

Mehal SinghAppellant

VERSUS

Surinder Pal SinghRespondent

2. **RSA No.2523 of 2019(O&M)**

Mehal SinghAppellant

VERSUS

Gurjant SinghRespondent

3. **RSA No.2524 of 2019(O&M)**

Mehal SinghAppellant

VERSUS

Gurinderpal SinghRespondent

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Ish Puneet Singh, Advocate for the appellant.

Mr. Sandeep Godara, Advocate for the respondent/caveator.

REKHA MITTAL, J.

This order will dispose of RSA Nos.1305, 2523 and 2524 of
2019 as identical questions of law and fact are involved for adjudication.

For facility of reference, facts are taken from RSA No.1305 of 2019.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession in respect of land measuring 3 kanal 17 marlas situated in the area of Zira, Tehsil Zira on the basis of ownership of the respondent/plaintiff was decreed by the trial Court vide decree and judgment dated 01.12.2016 and appeal preferred by unsuccessful appellant/defendant did not find favour with the Additional District Judge, Ferozepur as the Appellate Court affirmed findings of the trial Court vide judgment and decree dated 21.07.2018.

Counsel for the appellant would argue that the land was originally owned by Baghel Singh, grandfather of the respondent and father of the appellant. There was family settlement amongst sons of Baghel Singh on the basis whereof the entire land situated in the area of Zira came to be owned by appellant/defendant Mehal Singh. It is further argued that in view of family settlement arrived at between the appellant and his brothers, the respondent/plaintiff cannot be held to be owner of the suit land on the basis of entries in the jamabandi or merely because the appellant has been recorded to be *gair marusi* occupant of the land in question, shown to be owned by the respondent/plaintiff. It is further submitted that the appellant has filed an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') seeking permission to lead additional evidence in respect of documents (Annexure A-1 to A-4). It is argued that FIR No.110 dated 11.06.2018 in P.S. Sadar Patti District Tarn Taran was registered at the behest of respondent- Surinder Pal Singh and in the said FIR, the respondent/plaintiff has clearly stated that Baghel Singh, his grandfather had land approximately 177 killas and after death of his grandfather in the

year 1989, his father and his three brothers partitioned the land and started cultivating the same. Gurjant Singh was given 32 killas of land in village Markai road Kasoana, Narinder Singh got 85 killas in village Jand, Mehal Singh got 28 killas in Zira City and Harpal Singh got 31 killas in village Markai and all the families are doing agriculture on their land. It is argued with vehemence that keeping in view the admission of the respondent in view of the facts recorded in the aforesaid FIR registered in June 2018 just a month before decision by the first Appellate Court, the appellant should be allowed an opportunity to adduce additional evidence particularly to prove FIR (Annexure A-1).

Counsel representing the caveator has supported consistent findings recorded by the Courts with the submission that concurrent factual findings by the Courts do not suffer from an error much less perversity warranting intervention. It is further argued that all the documents sought to be produced by way of additional evidence were in existence before the appeal was decided by the first Appellate Court. It is argued that copies of khasra girdawaris till the year 2016 were in existence prior to decision by the original Court (trial Court), therefore, the application for additional evidence does not fall within the purview and ambit of Rule 27 of Order 41 CPC. Another submission made by counsel is that so far as the entries in the khasra girdawaris recording possession of suit land by the appellant is concerned, the respondent/plaintiff himself admits the factum of possession of suit land by the appellant and on that premise he had taken recourse to remedy in law for recovering possession of suit land which is in unauthorized possession of the appellant/defendant.

I have heard counsel for the parties, perused the paper-book particularly the judgments impugned and application for additional evidence along with documents Annexure A-1 to A-4.

Counsel for the appellant, in response to a query, would fairly inform that as per entries in the jamabandi and khasra girdawari, the appellant is recorded to be in possession of suit land being *gair marusi* and respondent/plaintiff is shown to be owner of the said land. He has further admitted that in column No.8 of the jamabandi, there is no reference to payment of any rent, batai or chakota etc. He has not disputed that entries in the revenue record of *gair marusi* without an entry in column No.8 recording payment of rent etc, occupant of the land is to be treated as unauthorized possessor thereof.

So far as contention of the appellant that there was a family settlement amongst the sons of Baghel Singh including Gurjant Singh, father of the respondent/plaintiff, no such plea has been raised in the written statement. The appellant in the preliminary objections raised a plea that he is in possession of suit land as owner and not a trespasser or in illegal possession. The trial Court in para 2 of the judgment has noticed that on merits, the appellant submitted that the plaintiff, defendant and Harpal Singh, their brother, have sufficient joint property in village Markai and revenue estate of Zira. Out of joint property or the property standing in the individual name in Zira and Markai are in joint possession of the parties. The defendant and his sons are in possession of the land situated in revenue estate of Zira. Similarly, the plaintiff and his sons are in possession of the land which is standing in the name of defendant and his sons and that land is situated in village Markai. The defendant and his sons have also filed similar suit for possession against the plaintiff, his

sons and Harpal Singh. The plaintiff and defendant have also filed sufficient applications for partition of their share in the revenue Courts and also in Civil Courts. The defendant is not in illegal possession. At the most, defendant can be said to be in possession being relative of the plaintiff. The defendant is in possession of the suit land since kharif 1994 and the plaintiff never claimed possession of the suit land from the defendant.

Perusal of the aforesaid extract reveals that not only the appellant failed to set up any such plea of family settlement but he has not even clarified with regard to extent of land of joint ownership or land standing in the individual names of the parties situated in Zira and Markai. Counsel for the appellant has failed to advance any arguments much less meaningful that reference to 28 killas of land of City Zira in FIR (Annexure A-1) also includes the suit land recorded to be ownership of the respondent/plaintiff. This apart, as the appellant and his sons have also taken recourse to civil proceedings for recovery of possession of land from the respondent, his sons and Harpal Singh situated in village Markai on the premise of his being owner of the said land, the appellant cannot be allowed to blow hot and cold in the same breath. Further, plea of the appellant of filing applications for partition in the revenue Courts and Civil Courts also shakes their plea of family settlement or the suit land having been given to the appellant in any such family settlement though no such family settlement has been pleaded or proved by the appellant/defendant. Analyzed from any angle, even if the appellant is permitted to produce FIR (Annexure A-1) by way of additional evidence, the same would not advance his cause to convince the Court that judgments and decrees impugned suffer from perversity or raise a question of law that needs

determination in the second appeal. Other documents sought to be produced by way of additional evidence, by no stretch of imagination, falls within the purview and ambit of clause (a) or/and (aa) of Rule 27 of Order 41 CPC entitling a litigant to adduce additional evidence before the Appellate Court. Even otherwise, as has been rightly argued by counsel for the caveator, there is no dispute between the parties that appellant/defendant is recorded to be in possession of suit land as *gair marusi*, in the revenue documents.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed in limine. As the appeals have been decided on merits, applications for condoning delay in filing and re-filing the appeals are of academic relevance only.

JULY 19, 2019

‘D. Gulati’

(REKHA MITTAL)
JUDGE

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