

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

RSA-2485-2000(O&M)

Date of decision:-18.7.2019

Satya Parkash and others

...Appellants

Versus

Puran through his LRs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Jagdish Manchanda, Advocate
for the appellants.

Ms.Raina Sabharwal Thakur, Advocate
for respondents No.1, 2 and 4.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Sh.Mool Chand son of Sh.Nathu Ram son of Sh.Devdutt, resident of village Sulkha, Tehsil Bawal, District Rewari had brought a suit against defendants i.e. S/Sh.Puran and Tara sons of Som Parkash, Smt.Kunta Devi widow of Rangi Lal, Smt.Yashwanti Devi – widow and Sh.Satish Kumar son of Sh.Jawahar and Ram Payari widow of Kishan, all residents of the same village, craving for grant of a decree for permanent injunction submitting that he is owner in possession of the suit land comprised in Khewat No.188, Khatoni No.247, rectangle No.55, killa No.14/1(3-13), khasra Nos.406(0-2), 407(0-2), 408(0-2) measuring 3 kanals 19 marlas situated at village Sulkha,

Tehsil Bawal, District Rewari since long; that the defendants wanted to take forcible possession of the suit land from the plaintiff on the strength of the entries in their favour managed by them in the revenue record, not listening to his request to desist from doing so. According to the plaintiff, the defendants never remained in possession of any part of the suit land for the last 12 years before institution of the suit whereas the possession of the plaintiff has been open, peaceful and hostile for the last more than 12 years. Feeling threatened at the hands of the defendants, the plaintiff had filed the civil suit in question.

On being put to notice, the defendants appeared. Defendants No.1 to 4 had filed a joint written statement contesting the suit denying that the plaintiff was owner of the suit land, rather contending that the suit land is dohli property and several other doholidars had got share in such land; that Mool Chand had 1/10 share, Puran and Tara 1/5th share each, Ram Swarup had 1/4th share, whereas Kishan Lal and other defendants had also share in the said land; that earlier the entries in the revenue record were wrong, so those were corrected by the revenue authorities. In the end, those defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is owner in respect of the suit land in his capacity as Dohlidar bavaze Punarth billa lagan as alleged? OPP.
2. If so, whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
3. Whether the defendants are entitled to special cost as provided under Section 35-B as alleged? OPD.
4. Whether the plaintiff is estopped from filing this suit by his own act and conduct? OPD.
5. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD.
6. Relief.

Both the parties led evidence in respect of their claims.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff, issue No.3 against the defendants, issue No.4 against the defendants and issue No.5 against the defendants. Resultantly suit of the plaintiff was decreed to the effect that the plaintiff is owner in possession of the suit land in his capacity as dohlidar which is established. This was so done vide judgment and decree dated 19.4.1999.

Defendants No.1 to 4 were aggrieved by the said

judgment and decree and they had filed an appeal before the Court of District Judge, Rewari, which was assigned to Additional District Judge, Rewari, who vide judgment and decree dated 15.5.2000 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit.

Being dissatisfied with the judgment and decree passed by the First Appellate Court, the legal representatives of the plaintiff had filed the present regular second appeal before this Court, notice of which was issued to the respondents.

I have heard learned counsel for the parties besides going through the record.

Permanent injunction dealt with by Section 38 of the Specific Relief Act, 1963 is a discretionary equitable relief, which is to be granted by the Court keeping in view all the facts and circumstances of the case including the conduct of the parties and no person can claim this relief as a matter of right. For laying basis for grant of permanent injunction, a person approaching the Court must do so with clean hands disclosing all the material facts within his knowledge and if he or she tries to conceal any material fact from the Court, then such relief is not to be granted. Clause (i) of Section 41 of the Specific Relief Act provides that an injunction cannot be granted when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

Here in the present case the conduct of the plaintiff has been of such type, which debars him from the relief of permanent injunction. He has claimed himself to be owner in possession of the suit land as dohlidar without disclosing that the defendants also had a share in the suit land as is evident from the perusal of the revenue record, which shows, that the plaintiff is just a co-sharer in the suit land as dohlidar and not exclusive owner in possession. It being so, the plaintiff could certainly not ask for permanent injunction against co-sharers since as per settled law other co-sharer have got right and interest in every inch of the joint land and no co-sharer can restrain the other co-sharer from enjoyment of the joint property. The plaintiff seems to be travelling in two boats simultaneously, on one hand claiming himself to be exclusive possession of the suit land, on the other hand, contending that his possession has been open, peaceful, hostile for the last 12 years amounting to claiming title on the basis of adverse possession. Both these pleas are antitheses of each other.

The trial Court without due application of mind and properly analysing the evidence brought on file by the parties and looking into their pleadings decreed the suit of the plaintiff, when on the basis of enough cogent and convincing evidence brought on file by the defendants, both oral as well as documentary including the revenue record the suit deserved to be dismissed. The trial Court has

observed that dohli means a rent free grant of land for the benefit of a temple to a person of religious purpose. There cannot be any difference with the trial Court in that regard. The trial Court has rejected the correction carried out in the revenue record by means of fard badar by giving unconvincing reasons that since the correction had taken place during pendency of the suit, therefore, the same could not be taken into consideration. However, the trial Court lost sight of the fact that in the earlier revenue record, the defendants/their predecessors in interest were being shown to be in possession of the suit land as dohlidars along with plaintiff/his predecessor-in-interest. The First Appellate Court has dealt with the matter in a very detailed and appropriate manner. For ready reference the relevant paras are being reproduced as under:

9. *Now, when the evidence of the parties, led during trial, is evaluated afresh, it emerges that upto 1962-63, Jamabandi, (Ex.DC) the names of the defendants were also recorded along with the plaintiff as Joint Dohlidar of the suit land. Therefore, the first question, which arises for determination is, whether the correction of the record, obtained by the defendants for the Jamabandies 1967-68 (Ex.P1) onwards till 1987-88 is illegal, as alleged by the plaintiff? The second question which arises for determination is whether the plaintiff had any*

cause of action for restraining the defendants as alleged?

10. Once it become the common stand of the parties that the revenue record upto the jamabandi 1962-63 was continued in the joint name of the appellant/defendants and respondents/plaintiffs as joint dohlidar, then the presumption of correctness is established in favour of the appellant/defendant. The subsequent proceedings of the correction of record by authorities, on the application of the appellants/defendants, though are being assailed on behalf of the respondents/plaintiffs, but they have failed to lay hand at any illegality or irregularity in the proceedings of the authorities ordering for the correction of the record, subsequent to the jamabandi for the year 1962-63, which would need interference by the Civil Court.

11. No rebuttal evidence has been led to the Farad Badar Ex.DA, ordered by the Assistant Collector IIInd Grade, on the basis of the report of the Girdawar, which is further based upon the report of the Patwari Halqa, as per the record.

The report of the Patwari (which is part of Ex.DA) traces back the title history of the property in question as that this property was the joint Dohlidar property in

Khasra No.123/201 of the year 1959-60, Misal Hakiyat to the extent of 10th share in equal share of Mool Chand son of Nathu and Prabhu son of Fatu, Five shares in equal shares of Puran and Tara sons of Som Parkash, four share in equal share of Sheo Dayal and Ram Sarup sons of Ram Lal and two share in equal share of Kishan Lal son of Luxmi Narain, has correctly recorded the share in the Misal Hakiyat of the year 1959-60, followed in Misal Hakiyat of the year 1962-63, and as such, the correction in the subsequent record, which was without basis, was ordered.

12. It was for the respondents/plaintiffs to go in a appeal against the said order and in the absence of any such proceedings, it may not be possible for the respondent/plaintiff even to establish the jurisdiction of the Civil Court. As such, the findings of the trial Court are liable to reversed and the same are hereby reversed.

I do not find any reason to disagree with the First Appellate Court on that point.

Learned counsel for the appellant has referred to authority **Amar Singh and others Versus Kishan Dev (Dead) through LRs, 2016(2) Rent LR 345** and **State of Himachal Pradesh and another Versus Budhia and another, 2011(58) RCR(Civil) 446,**

however, those authorities do not come to help of the appellants due to different facts and circumstances and the context in which such observations had been made.

No substantial questions of law arises.

Thus I do not find any illegality or infirmity in the judgment passed by the learned First Appellate Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Finding no merit in the appeal, the same stands dismissed.

18.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No