

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

L.P.A. No.1573 of 2015 (O&M)in
Civil Writ Petition No.7735 of 2013
Date of decision: September 23, 2019

Krishan		...Appellant
	Versus	
Financial Commissioner, Haryana and others		...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Harkesh Manuja, Advocate for the appellant.

Mr.Sharad Aggarwal, Addl. AG, Haryana.

Mr.Rakesh Nagpal, Advocate for respondent No.4.

HARINDER SINGH SIDHU, J.

This Letters Patent Appeal has been filed against the judgment dated 21.08.2015 in CWP No.7735 of 2013 titled 'Bimla Devi vs. Financial Commissioner, Haryana and others' whereby the writ petition filed by respondent No.4 assailing the order of the learned Financial Commissioner dated 21.03.2013 was allowed.

The appellant had filed an application before the Assistant Collector 2nd Grade Tohana for correction of Khasra Girdawari from 'Kharif 2000' and for recording him as *Gair Maurisi* Tenant on land measuring 32 Kanal 04 Marlas, being 1/4th share of the total land measuring 128 Kanal 17 Marlas comprised in Khewat No.71 Khatauni No.203 as per Jamabandi for the year 1999-2000. Respondent No.4 filed objections contending that the application of the appellant for correction of Khasra Girdawari was not maintainable as he had not attached any document regarding tenancy or rent

over the land in question. The Ld. AC 2nd Grade rejected the objection vide order dated 05.03.2007. Respondent No.4 assailed that order before the Commissioner, Hisar Division, Hisar, who vide order dated 24.12.2008 set aside the order of the AC 2nd Grade. Appellant challenged the order of the Commissioner by filing ROR No.529 of 2008-2009 which was accepted by the learned Financial Commissioner vide order dated 27.03.2009. Respondent No.4 filed CWP No.17782 of 2009. The writ petition was allowed. The order of the Financial Commissioner was set aside and the matter was remanded back to the Financial Commissioner for fresh decision.

The Financial Commissioner vide order dated 21.03.2013 again accepted the revision petition filed by the appellant. The parties were directed to appear before the AC 2nd Grade Tohana for further proceedings.

Respondent No.4 filed CWP No.7735 of 2013 assailing the order of the Financial Commissioner. The writ petition was allowed. The order of the Financial Commissioner dated 21.03.2013 was set aside. Aggrieved the appellant has filed the present LPA.

The learned single Judge noticed that the appellant had filed a civil suit for permanent injunction against respondent No.4 and six other persons for restraining them from interfering in his peaceful possession in the capacity of tenant on '*Batai Tihai*' in respect of the same agricultural land measuring 32 Kanal 04 Marlas. The civil suit was dismissed on 08.01.2010 by the Additional Civil Judge (Senior Division), Tohana. It was held that the appellant has not been able to prove that he was in possession over the suit land as tenant *Gair Maurisi* on '*Batai Tihai*'. The

appeal of the appellant was dismissed by District Judge, Fatehabad on 16.04.2011. RSA No.2041 of 2011 filed by the appellant was dismissed by this Court on 23.05.2011. SLP(Civil) No.16181 of 2011 was dismissed on 10.10.2011.

The appellant has argued that he had filed Civil Suit No.315/RBT on 23.05.2006 for injunction for restraining the defendants therein from dispossessing him which was decreed in his favour. The Ld. Single Judge held that the decree in the said civil suit was of no avail to the appellant. Firstly, it was an ex parte decree. Secondly, respondent No.4 was not a party in that suit. Respondent No.4 is Bimla Devi widow of Jagdish son of Hetram. Defendant No.6 in that civil suit was Bimla d/o Smt.Chander widow of Ruldu s/o Hemraj. The decision in that suit would not bind respondent No.4. Even in that suit the trial Court had held that the appellant had only been able to prove his possession. He had failed to prove his possession in the capacity of tenant *Gair Maurisi* on '*Batai Tihai*'. As the appellant had not been able to prove his status as tenant *Gair Maurisi* on '*Batai Tihai*' in the said civil suits, the writ petition was allowed.

There is no illegality or infirmity in the aforesaid order.

The appeal is accordingly dismissed.

**(RAJIV SHARMA)
ACTING CHIEF JUSTICE**

**(HARINDER SINGH SIDHU)
JUDGE**

September 23, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No