

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

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RSA No.5043 of 2011 (O&M)

Decided on : 24.07.2019

Raminder Pal Singh

... Appellant

Versus

Jarnail Singh and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE RAMENDRA JAIN

Present : Mr.Satnam Singh, Advocate
for the appellant.

Mr.Naveen Batra, Advocate
for respondents No.1 to 4.

Ramendra Jain, J. (Oral)

The plaintiff through this Regular Second Appeal has laid challenge to the judgment and decree dated 28.3.2011 of the lower Appellate Court and that of the trial Court dated 03.11.2008, whereby his suit for declaration and joint possession was partly decreed.

Briefly, the plaintiff-appellant herein filed suit for declaration and permanent injunction claiming himself to be the co-sharer and in joint possession of the suit land situated in village Jhinjri against the respondents which after holding trial, decreed on 03.11.2008 declaring him co-sharer in possession of land measuring 3 kanals 9 marlas comprising khasra No.8P/4/2 and 8R/6, whereas defendant No.1 was declared in possession of land bearing Khasra No.8R/5/2/1 and was restrained from claiming possession over land bearing khasra No.8R/4/2 and 8R/6.

Being aggrieved, the plaintiff-appellant approached the first Appellate Court, but remained unsuccessful as his appeal was dismissed

vide judgment and decree dated 28.03.2011.

Plaintiff-appellant contends that both the courts below erred in not appreciating the fact that as per revenue record, the suit land comprising khasra No.8R/5/2/1 was a *Banjar Kadim* (barren / uncultivable land). Therefore, respondent No.1 could have not been declared in its possession.

Refuting the above submission, learned counsel for the defendant-respondent No.1 submits that in the revenue record throughout, he was shown as “gair murasi tenant” over the suit land and thus, suit of the appellant has rightly been dismissed. An application for correction of entries in khasra girdawari in favour of defendant-respondent No.1 was filed by the appellant before the revenue authority. However, the same was rejected. The appellant did not challenge the order rejecting his aforesaid application. Therefore, the same attained finality.

Having given thoughtful consideration to the rival submissions, this Court finds the instant Regular Second Appeal merits acceptance for the reasons to follow:

No question of law much less substantial has been raised in this appeal. Therefore, same is held not maintainable.

(i) Revenue authority dismissed application of the appellant for correction of entries in khasra girdawari on the ground that since the same have been incorporated in jamabandi, therefore, they could be set aside by civil court only. Pursuant thereto, the appellant filed the present suit. Therefore, any order of the revenue authority rejecting the application of the appellant for correction of khasra girdawari, became

meaningless.

(ii) Respondent No.1 though has claimed himself to be a “gair murasi tenant” over the suit land , but did not dispute its character as “*Banjar Kadim*” (uncultivable). A “*Banjar Kadim*” land means it is an old fallow. Therefore, the suit land being uncultivable as per jamabandi entries, it can be held to be in possession of the respondent No.1.

There is no rent receipt or lease deed in favour of respondent No.1 qua suit land, showing him to be a tenant at will over the same. Therefore, in the absence of any such evidence, respondent No.1 cannot be termed as “gair murasi tenant” over the suit land from any angle.

Undisputedly, the appellant, plaintiff is co-sharer in the suit land and none of his co-sharers i.e. respondents No.2 to 10 ever came forward to lay challenge to his claim. Therefore, respondent No.1 claiming himself to be a “gair murasi tenant” in the same had no locus standi or legal right to challenge the co-sharership of the plaintiff-appellant.

In view of the discussion made above, the appeal is accepted. The judgment and decree of the appellate court dated 28.3.2011 is set aside. The judgment and decree of the trial court partly decreeing his suit is modified and converting into decretal of the suit of the appellant in toto.

[RAMENDRA JAIN]
JUDGE

24.07.2019

sd

Whether speaking/reasoned

: Yes/No

Whether Reportable

: Yes/No