

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

RSA No.2693 of 2012 (O&M)

Date of Decision: 12.12.2019

Munesh Devi and others

.....Appellants

Versus

Kailasho Devi and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.M.L.Sarin, Sr. Advocate
with Mr. Nitin Sarin, Advocate
for the appellants.

Mr. Alok Jain, Advocate
for respondents no.1 to 10.

LISA GILL, J.

This appeal has been filed by the appellants, who are arrayed as defendants no.14 to 23, before the learned trial Court.

Appellants are aggrieved of judgement and decree dated 02.11.2011, passed by the learned Additional District Judge, Sonapat, whereby judgement and decree dated 15.06.2010, passed by the learned Civil Judge (Jr. Division), Sonapat, dismissing the plaintiffs/respondents suit, has been set aside and the suit filed by the plaintiffs-respondents, partly decreed.

Plaintiffs, arrayed as respondents no.1 to 10, in this appeal, filed a suit for declaration that decree dated 06.10.1997, passed in Civil Suit No.236 of 1986, in favour of the present appellants, is illegal, null, void and not binding on the rights of the plaintiffs to the extent of their share and

further sought a declaration to the effect that the revenue entries reflecting the plaintiff-Asha Ram, as tenant-Doyam to be illegal, null and void. A decree for permanent injunction was also sought for restraining the defendants from interfering in the peaceful, cultivating possession of the plaintiff to the extent of his share over the land in dispute.

Brief facts necessary for the adjudication of the case are that the plaintiff-Asha Ram (now represented by his legal representatives), filed a suit for declaration to the effect that decree dated 06.10.1997, passed in favour of defendants no.14 to 23 as mentioned in the plaint, is illegal, void and not binding on the rights of the plaintiff. It is pleaded that the forefather of the plaintiffs namely Har Sahai and defendants no.14 to 23, was in cultivating possession over the suit property as a tenant without paying any rent to the true owners i.e., defendants no.1 to 13. After his death, tenancy rights are claimed to have been inherited by his four sons namely Devak Ram, Munshi, Hardwari and Abhay. Munshi and Abhay, are pleaded to have died issue-less and their share was also inherited by the plaintiff and defendants no.14 to 23. The plaintiff claims to be the son of Hardwari and defendants no.14 to 23, are the legal representatives of Devak Ram. It is further pleaded that defendants no.14 to 23 managed to get the revenue entries changed to suit their convenience and in the column of cultivation, the plaintiff's father is wrongly shown as a tenant under defendants no. 14 to 23 (tenant Doyam), whereas the plaintiff's father was a tenant-Awal. The plaintiff claims to have installed an electric tubewell in the suit property for the last 20 years and claims cultivating possession to the extent of his share over the property in dispute. It is pleaded that defendants no.14 to 23, filed a

Civil Suit no. 226 of 1986 against defendants no.1 to 13, which was decreed on 06.10.1997 without impleading the plaintiff as a party to the suit, though he was a necessary party. It is further pleaded that the plaintiff filed an application to be impleaded as a party, but the said application was dismissed. Civil Revision No. 1877 of 1997, was filed by the plaintiff before this Court, which was disposed of on 18.09.1997, wherein the plaintiff is held to be in possession of the suit property and liberty was afforded to him to agitate his rights by filing a separate suit. Hence the suit was filed.

Upon notice, defendants no.1 to 13, did not appear and they were proceeded *ex parte*. The suit was however contested by defendants no.14 to 23. Various preliminary objections were raised in the written statement and averments on merits, were denied. It is stated therein that the plaintiff's forefathers were never in actual, physical possession of the suit property. Moreover, the defendants have acquired the ownership rights through a Civil Court decree dated 06.10.1997, which was confirmed by the learned Appellate Court. Manipulation of the revenue entries, is denied as is the existence of the tubewell. Dismissal of the suit was sought.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for a decree of declaration to the effect that the decree dated 06.10.1997, is illegal, void and not binding on the rights of the plaintiff and also declaring that the revenue entries showing the plaintiff as tenant Doyam are illegal, void and liable to be corrected?OPP
2. If issue no.1 is proved, whether the plaintiff is entitled for a decree of permanent injunction as prayed for?OPP
3. Whether the plaintiff has no cause of action to file the present suit?OPD.
4. Whether the civil court has no jurisdiction to entertain and try the present suit?OPD

5. Whether the defendants are entitled for special costs under Section 35-A CPC?OPD
6. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances of the case and evidence on record, concluded that there are material discrepancies in the description of the relations of defendants with each other and that as per the revenue record, Hardwari son of Nathu son of Har Sahai, is reflected as Gair Marusi Doyam. The suit, it was held was filed only with a view to grab the suit property of which the answering respondents had become the owners by virtue of the Civil Court decree dated 06.10.1997. It is further observed that the plaintiff failed to prove that the revenue entries were manipulated in any manner by defendants no.14 to 23. Accordingly, suit filed by the plaintiff was dismissed.

Appeal was preferred by the plaintiff-Asha Ram son of Hardwari (represented by his legal representatives). Learned Additional District Judge, Sonapat, held that sufficient evidence had not been produced by the plaintiff to prove that the predecessor-in-interest of Asha Ram, had become owners of the suit property. It is specifically observed that the status of the plaintiffs or their predecessor-in-interest, being the tenant Doyam over the suit land had not changed. However, it is observed that once defendants no.14 to 23 were declared to be the owners of the suit property having perfected their occupancy and tenancy, the plaintiff's status over the suit land changed from that of tenant Doyam to tenant Awal. In this view of the matter, appeal filed by the plaintiffs was partly accepted and, his suit was

partly decreed vide impugned judgement and decree dated 02.11.2011, to the extent that the present appellants (defendants no.14 to 23) were restrained from dispossessing the appellants from the suit property except in due course of law.

Aggrieved therefrom, present appeal has been filed by the appellants-defendants no.14 to 23/their legal representatives.

Learned senior counsel for the appellants vehemently argues that the learned First Appellate Court, has carved out a case for the plaintiff, which is not even pleaded. It is submitted that the plaintiff had specifically pleaded that he is the tenant Awal and entry reflecting him to be tenant Doyam, is incorrect, illegal, null and void. It was never the case of the plaintiff that by virtue of operation of decree dated 06.10.1997, the present appellants had become owners of the suit property, therefore, the status of the plaintiff changed from that of tenant Doyam to tenant Awal. It is further submitted that the finding of the learned trial Court insofar as the correctness of the entries is concerned, has been upheld. Both the learned Courts below have returned a concurrent findings in this respect, which are not under challenge. Issue no.1 has been categorically decided in favour of the appellants by both the learned Courts below. Therefore, the learned Additional District Judge, Sonapat, it is submitted has grossly erred on facts and in law in firstly treating the plaintiff to be a Tenant Awal and thereafter granting an injunction restraining the present appellants from dispossessing the plaintiff from the suit property. It is argued that by virtue of judgement and decree dated 02.11.2011, learned Additional District Judge, Sonapat, has conferred upon the plaintiff, the rights to which the plaintiff is not entitled to

and deprived the appellants, which is clearly impermissible. It is vehemently argued that decree dated 06.10.1997, has attained finality, insofar as the rights of the present appellants are concerned qua the suit property and the same has been upheld by both the learned Courts below.

Learned senior counsel for the appellants raises the following substantial questions of law for adjudication by this Court:-

1. Whether the Lower Appellate Court could have held the plaintiff-respondents 1 to 10 to be tenants Awal when the same was neither pleaded nor proved?
2. Whether the Lower Appellate Court could have decreed the suit for permanent injunction when it specifically stood proved that the defendants-appellants were the owners in possession of the land in dispute?
3. Whether the Lower Appellate Court could have issued a decree of injunction against the true owner?
4. whether the judgement and decree passed by the Lower Appellate Court is perverse to the extent whereby the plaintiff-respondents no.1 to 10 have been held to be in cultivation possession as tenant Awal?

It is thus prayed that the present appeal be allowed and the judgement and decree dated 02.11.2011, passed by the learned Additional District Judge, Sonapat, be set aside, consequently suit filed by the plaintiffs be dismissed throughout.

Learned counsel for the respondents-plaintiffs (respondents no.1 to 10) while refuting the abovesaid arguments raised by learned senior counsel for the appellant, submits that it is proved from the evidence on record that the plaintiff was tenant Awal and not tenant Doyam. The parties, it is submitted are related to each other through a common ancestor. Discrepancy in the memo of parties when compared with the pedigree table,

it is contended is inconsequential. He refers to the testimony of DW-1-Om Dutt son of Raghbir to submit that there is an admission of the plaintiffs being in possession of the suit property and that they did not join the defendants at the time of filing of the suit which culminated in a decree dated 06.10.1997, therefore, the plaintiffs were not declared to be the owners along with defendants no.14 to 23. Learned counsel for respondents no.1 to 10, while referring to Ex.P-2, Ex.P-4, Ex.P11, Ex.P-12, Ex.P-13, Ex.P-15, Ex.P-16 and Ex.P-19, submits that the plaintiff is shown to be in possession of the suit property in equal shares. In this view of the matter, it is submitted that the plaintiff is proved to be the tenant Awal. The reasoning given by learned Additional District Judge, Sonapat, is inconsequential in view of the fact that the evidence on record proves the plaintiff to be the tenant Awal. In this view of the matter, it is submitted that decree dated 06.10.1997, would have no effect on the rights of the plaintiff, who is entitled to be declared to be the owner in possession of the suit property being an occupancy tenant. He relies upon the judgements of this High Court in **Jatinder Kumar Vs. Harmohinder Singh, 1993(2) PLR 370, Jit Singh and others Vs. Chanan Singh and another 1966 PLJ 246, Khacheru (dead) through his Lrs and others Vs. Mam Chand and others 2012(5) R.C.R (Civil) 107** as well as of the Hon'ble Supreme Court in **Kok Singh Vs. Smt. Deok Bai (1976) 1 Supreme Court Cases 383, Bihar Supply Syndicate Vs. Aasiatic Navigation and others (1993) 2, Supreme Court Cases 639**, to submit that even if an appeal or cross-objection is not filed by the plaintiff, the Appellate Court can pass the appropriate decree in terms of order 41 Rule 33 CPC. It is thus prayed that the present appeal be dismissed and the judgement and

decree passed by the learned Additional District Judge, Sonapat, be upheld.

I have heard learned counsel for the parties and have gone through the record with their assistance.

It is a matter of record that the present appellants filed suit no.236 of 1996 for declaration and permanent injunction against defendants no.1 to 13, to the effect that the appellants had acquired right of ownership in the suit property by virtue of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) 1953. Plaintiffs and respondents no.1 to 10, filed an application in the said Civil Suit no. 236 of 1986 for being impleaded as a party to the suit. Their application, was admittedly dismissed. Civil Revision No. 1877 of 1997, Ex.D-3, was disposed of by this High Court on 18.09.1997 with the following observations :-

“After hearing the counsel for the parties I find no ground to interfere with the order passed by the trial Court, especially when Mr. O.P.Goel, Advocate, appearing for the plaintiffs has taken a candid stand that the plaintiffs will not disturb the possession of the petitioner only in case, he is found to be in possession of the land in dispute prior to the date of filing of the suit and in that eventuality, they will dispossess him in due course of law. Mr. Goel specifically brought out that in case the petitioner came into possession of the land and after the filing of the suit then, he would be bound by the decision of the suit.

In view of the above, this petition is disposed of with the above directions and observations.”

Civil Suit no.236 of 1986, was decreed in favour of the present appellants on 06.10.1997. Plaintiffs and respondents no.1 to 10 instituted the present Civil Suit no. 287 on 24.09.1998 i.e., after one year of the passing of the decree dated 06.10.1997. Vide judgement and decree dated 06.10.1997,

Ex.P-23 and Ex.D-1 and Ex.D2), the appellants were declared to be the owners of the land comprised in Pana Mundhara, Gehlan and Piplan. Appeal filed by the owners of the suit land, challenging judgement and decree dated 06.10.1997, was decided on 08.11.1998, Ex.DA. The said appeal was dismissed *qua* the land in Pana Mundhara, Gehlan and Piplan, while finding *qua* the land of Pana Silan, was set aside.

It has been held in judgement dated 06.10.1997 that the present appellants (plaintiffs therein) were able to prove that they were in cultivating possession of the suit land as tenants since the time of their forefathers at a very nominal rate of rent of the whole produce. Rent had not been increased by the owners of the land neither the appellants were ejected from the suit property nor any proceedings of ejectment ever initiated against them. It is specifically held that the appellants fulfilled the requirement of Section 8 of the Punjab Tenancy Act, 1887 and were held to be occupancy tenants over the suit property. It is observed in para no.19 of the said judgement that as per the revenue record, the land of Silan Pana was found to be owned by individual persons and long drawn out possession over the said land was also proved, but they could not be declared to be the owners in possession of the suit land being filed the suit under Order 1 Rule 8 CPC. The present appellants filed an appeal regarding the land of Pana Silan and an appeal was preferred by the other party, as well against the judgement dated 06.10.1997. Appeal filed by the present appellants was dismissed as withdrawn with permission to file a fresh suit after removal of the technical defect. The present appellants, thereafter filed Civil Suit no., 312 of 2000 after removing the technical defect in the earlier suit, seeking a declaration to the

effect that they had become owners of the suit property in view of the land in Pana Silan. The said suit was decreed in their favour on 07.09.2009, Ex.D-4.

Plaintiff in the present suit claimed his right on the basis of a pedigree table as shown in para no.1 of the plaint. Reliance was also placed on the copies of jamabandies Ex.P1 to Ex.P-22, from the year 1958 onwards and Khasra Girdawari Ex.P-25. Learned Courts below, have rightly referred to the material discrepancies in the description of relationship of defendants with each other in the title of the suit *viz a viz*, the pedigree table. Om Dutt and Brahm Dutt, in the memo of parties have been shown to be sons of Ragbir Singh, whereas in the pedigree table, they were shown as sons of Ram Niwas. As per the jamabandi for the year 1958, Ex.P-14, Hardwari son of Nathu Son of Har Sahai, is clearly reflected as Gair Marusi Doyam. The subsequent, Jamabandi, Ex.P-23, for the year 1965-66, again reflects Hardwari son of Nathu son of Har Sahai, to be Gair Marusi Doyam. Both the learned Courts below have returned a concurrent finding that there is no evidence whatsoever regarding manipulation of the revenue records to the effect that the plaintiff was in-fact Gair Marusi Awal and has been wrongly reflected as Gair Marusi Doyam.

Learned trial Court has correctly observed that the present suit has been filed by the plaintiff, after the passing of the Civil Court decree dated 06.10.1997, only with a view to grab the property of which the present appellants had become owners. I do not find any merit in the argument raised by the learned counsel for respondents no.1 to 10 to the effect that the said respondents-plaintiffs, are proved to be the tenant Awal on the basis of the evidence on record. Both the learned Courts below have returned a

concurrent finding against the plaintiff in this respect. Learned Additional District Judge, Sonapat, conclusively held that there is no evidence on record to show that the revenue entries reflecting the plaintiff to be tenant Doyam, are manipulated or incorrect and that Ex.P-22, is not sufficient evidence to conclude the plaintiff to have become the owner of the suit property but has in a peculiar manner proceeded to observe that once the present appellants became the owners of the suit property, the plaintiff, who is admittedly recorded as tenant Doyam automatically changed his status to that of tenant Awal. Such a reasoning apart from being totally beyond the pleadings of the plaintiff, is patently flawed, in-correct and unsustainable. At this juncture, it is relevant to note that this suit was filed by the plaintiff after the passing of the decree dated 06.10.1997. Such a plea of the plaintiffs automatically becoming tenant Awal by way of operation of decree dated 06.10.1997, was admittedly never raised in the plaint. Contention of learned counsel for the plaintiffs-respondents that despite no challenge being raised to the findings of the learned Courts below, the respondents are entitled to contest the said findings in respect to the status of the plaintiffs (tenant Awal or Doyam), is devoid of any merit, hence rejected. The Hon'ble Supreme Court in **K. Muthuswami Gounder Vs. N Palaniappa Gounder (1998) 7 Supreme Court cases 327**, has clearly held that in exercise of power under Section 41 Rule 33 CPC, no rigid rule can be laid down and exercise thereof would depend upon the fact of each case. It is clarified that it is only in exceptional cases, that the Appellate Court can pass such a decree or order as ought to have been passed in favour of a party, who had not preferred any appeal. Learned counsel for respondents no.1 to 10, is unable to point out any such

exceptional circumstance from the evidence, which would justify interference in the concurrent findings recorded by both the learned Courts below.

Much stress has been laid on order dated 18.09.1997, passed in CR No. 1877 of 1997, to submit that the possession of the plaintiff over the suit property has been conclusively decided by this Court. However, a perusal of the said order dated 18.09.1997, does not in any manner indicate any finding much less a conclusive finding to the effect that the plaintiff was in possession of the suit property prior to the date of filing of Civil Suit no. 236.

It is relevant to note, at this stage, that the plaintiff has stated that he is a tenant Awal and not tenant Doyam and he had installed the tubewell in the suit land for the last 20 years. Statement of DW-1-Om Dutt, cannot in any manner vest the plaintiff with a right to be declared tenant Awal. Needless to say, by declaring the plaintiff as tenant Awal while upholding the finding under issue no.1, is incorrect and unjustified. The rights of the appellants have been wrongly curtailed in this manner by the learned Additional District Judge, Sonapat. The ramifications and implications of such a finding/conclusion were clearly not considered by the learned First Appellate Court. Therefore, finding of the learned Additional District Judge, Sonapat, to the effect that the plaintiff has changed his status from that of tenant Doyam to tenant Awal by virtue of declaration of the present appellants to be the owners of the suit land, vide judgement and decree dated 06.10.1997, is set aside.

Accordingly, the substantial questions of law, are answered in

favour of the appellants and against the respondents.

No other argument has been raised.

Judgment and decree dated 02.11.2011, passed by the learned Additional District Judge, Sonapat, is set aside and the judgement and decree dated 15.06.2010, passed by the learned Civil Judge (Jr. Division), Sonapat, is upheld. Suit filed by the plaintiffs-respondents, is accordingly dismissed.

Present appeal, is accordingly allowed.

12.12.2019

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.