

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) RSA No. 3702 of 2012 (O&M)  
Date of decision : 28.3.2019

...

Harnek Singh and others

.....Appellants

vs.

Gurcharan Singh and others

.....Respondents

2) RSA No. 4893 of 2012 (O&M)

...

Gurcharan Singh and others

.....Appellants

vs.

Sher Mohammad and others

.....Respondents

**Coram: Hon'ble Mr. Justice H. S. Madaan**

Present: Mr. Malkeet Singh, Advocate for the appellants  
in RSA 3702-2012  
and for respondents in RSA 4893-2012

Mr. Vijay Lath, Advocate for the appellants  
in RSA 4893-2012  
and for respondents in RSA 3702-2012

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**H. S. Madaan, J.**

Vide this judgment, I intend to dispose of RSA No. 3702 of  
2012 titled as 'Harnek Singh and others vs. Gurcharan Singh and

others' and RSA No. 4893 of 2012 titled as 'Gurcharan Singh and others vs. Sher Mohammad and others'.

Briefly stated, facts of the case are that plaintiffs – Gurcharan Singh and others had brought a suit against defendants Rattan Kaur, as well as Balbir Kaur, Sher Mohammad, Didar Mohammad and Mohan Deen, seeking a decree for permanent injunction restraining the defendants from interfering in the peaceful cultivating possession of the plaintiffs as co-sharers over the suit land.

As per version of the plaintiffs, they are Khewatdars of Taraf Neelee (Pati West) of village Khizrabad having shares in the shamlat of that Pati and are in possession of the suit land. Earlier to them their forefathers were in possession as co-sharers. Plaintiffs No. 1 to 3 are heirs of Nagina Singh, plaintiffs No. 5 and 6 are heirs of Krishan Singh, whereas plaintiffs No. 7 to 9 are heirs of Hans Raj. Nagina Singh, Hans Raj and Krishan Singh have died and mutation of their inheritance has already been sanctioned in the names of their heirs. Chanan Singh is shown to be in possession of the suit land, but he had already mortgaged his khewat alongwith share in the shamlat to plaintiff No.3. The defendants are now trying to dispossess the plaintiffs from the suit land, to which they have no right. Feeling aggrieved, the plaintiffs brought the suit in question in the Court.

On notice, defendant No.1 appeared and filed written statement contesting the suit contending that she was an old widowed lady and she was in exclusive possession of khasra No. 24 (3-10) which was part of shamlat land; that the plaintiffs were taking benefit

of wrong entries in the revenue record and plaintiffs have not approached the court with clean hands. On merits, the defendant refuted the material assertions in the plaint and reiterated the assertions in the preliminary objections, so taken by her, praying for dismissal of the suit.

In the written statement, preferred on behalf of defendant No.3, he also contested the suit contending that plaintiffs have not approached the Court with clean hands. On merits, he admitted the plaintiffs to be Khewatdars of the village submitting that there is a samadh of Pir Naun Gaza in Khasra No. 24//13 (4-14) and two rooms were constructed by the Muslim community of the village and some trees were also planted. A well is also in existence. Therefore, residents of the village are owners and in possession of said Khasra number, with which the plaintiffs have no concern. Such defendant also craved for dismissal of the suit.

Defendants No. 2, 4 and 5 were proceeded against ex parte.

The plaintiffs filed replication, controverting the allegations.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
2. Whether the plaintiff has not approached the court with clean hands? OPD
3. Relief.

During the course of their evidence, the plaintiffs examined

Ram Pal Singh as PW-1, Dildar Ali as PW-2 whereas plaintiff Harnek

Singh got his statement recorded as PW-3. The plaintiffs tendered into evidence documents Exhibits P-1 to P-5 and thereafter closed their evidence. In rebuttal, defendants examined Nachattar Singh as DW-1, Jasvir Singh as DW-2, Sham Singh as DW-3, Shasher Singh as DW-4 and then after tendering certain documents, the evidence of the defendants stood closed.

The trial Court after hearing the arguments, decided issue No. 1 in favour of the plaintiffs and against the defendants. Issue No.2 was decided against the defendants and in favour of the plaintiffs. Resultantly, the suit of the plaintiff was partly decreed with costs and the defendants were restrained from interfering in the suit land, except Khasra No. 24//13 (4-14) and except in due course of law, vide judgment and decree dated 7.11.2008.

It may be mentioned here that defendant No.1 Smt. Rattan Kaur had died during the pendency of the suit and her legal representatives were brought on record.

The judgment and decree passed by the trial Court were challenged by both the parties by way of filing separate appeals, which were assigned to Additional District Judge, SAS Nagar, Mohali, who, however vide judgment and decree dated 30.3.2012, dismissed both the appeals.

Thereafter both the defendants and plaintiffs have knocked at the door of this Court, by way of filing separate appeals, notice of which was given to the respondents therein, who put in appearance.

I have heard, learned counsel for the parties, besides going

through the record.

RSA 3702-2012

As far as, the appeal filed by defendants being No. RSA 3702-2012 is concerned, the same does not appear to have any merit. The trial Court on appreciation of evidence adduced by both the parties, came to the conclusion that the plaintiffs have established their claim over the suit land except Khasra No. 24//13 (4-14), by leading cogent and convincing evidence. The entries in the jamabandi for the year 1996-97 Exhibit P-1 have been referred to. As regards Khasra No. 24//13 (4-14), the trial Court has observed that this khasra number is a samadh having construction. Therefore, relief qua that khasra number was declined to the plaintiffs. The trial Court has further observed that defendant No.1 has contested claim of the plaintiff only qua Khasra No. 24 (3-10), but she failed to establish her possession over that number. As she had challenged jamabandi Exhibit P-1 and girdawaries showing possession of the plaintiffs mainly on two grounds that joint land was partitioned previously and this number fell into the share of defendant No.1. However, the said earlier partition was got cancelled, it being so, defendant No.1 had failed to substantiate the assertions made by her in the written statement.

Furthermore, there was no entry regarding the partition in the revenue record. With regard to compromise relied upon by defendant No.1 dated 24.4.2002, Exhibits D-1 and D-2, those were rejected by the trial Court for the reason that the documents were only carbon

copies of writings, original of which had not been produced. No permission was sought or granted to lead secondary evidence thereof. Furthermore those had allegedly been executed during pendency of the suit. The trial Court has rightly concluded that possession of the parties at the time of filing of suit was to be seen and defendant No.1 had failed to establish her possession over the suit land and DW-1 Nachatar Singh had stated that defendant No.1 had never cultivated the suit land. The trial Court has clarified that though the plaintiffs have been found to be in possession of the suit land except Khasra No. 24//13 (4-14), but that would not construe that the plaintiffs are the owners of the suit land.

The Court of Additional District Judge, SAS Nagar, Mohali, had affirmed the judgment and decree passed by the trial Court. Operative part of the discussion, contained in para No.10 is reproduced for ready reference:-

“10. I have paid a considerable thought to the submission of both sides, and have perused the record. I have gone through the statements of witnesses examined by both the parties and documents placed on record by them including revenue record. I have reached to the conclusion that there is no merit in this appeal and it deserves to be dismissed. For reaching to this conclusion, reasoning is as under:-

It has been vehemently argued by learned

counsel for the appellants that khasra No. 24 (3-10) had fallen to the share of Rattan Kaur on the basis of partition proceedings. But DW-1 Nachhattar Singh, DW-3 Sham Singh have admitted that the said partition was cancelled. Even otherwise also, any such partition was never relied upon nor entry in this regard was made in the revenue record pertaining to the suit land. Meaning thereby, the said partition was never acted upon by the parties themselves, so stand of Rattan Kaur that she came in possession of the said Khasra number on the basis of partition, is not proved on record. Second plea of the appellants is that a compromise Ex.D1 and Ex.D2 was effected during pendency of the suit in view of which, Rattan Kaur came into possession of this khasra number. Any change qua possession of the khasra number during pendency of the civil suit, carries no weight. Rather, it shows that earlier Rattan Kaur was not in possession of the said khasra number, otherwise she would not have claimed her possession on the basis of said compromise effected during the pendency of the suit. Even original of the said compromise was not proved on record, nor any permission qua secondary evidence was sought in that regard. Apart

from that, Nachhattar Singh DW-1 has specifically stated that Rattan Kaur never cultivated the suit land. Apart from that DW-2 Jagir Singh has also stated that he does not know as to who is in possession over the suit land. DW-3 Sham Singh could not tell the khasra number of the suit land to be cultivated by Rattan Kaur. So after considering the entire pleadings and evidence of both the parties, learned trial Court has rightly held that Rattan Kaur has failed to prove her possession over the said khasra number. Rather, possession of respondents/plaintiffs over the said khasra number was proved. So findings of learned Trial Court are perfectly in accordance with law and they stand affirmed. Impugned judgment/decreed qua khasra No. 24 (3-10) do not suffer from any illegality or infirmity, so they do not call for any interference of this Appellate Court. This appeal being without any merit, deserves dismissal.”

I do not see any reason to disagree with the findings of fact recorded by both the Courts, with respect to the claim of the defendants.

Accordingly RSA- 3702-2012 stands dismissed.

RSA 4893-2012

The trial Court, as well as Court of Additional District Judge, SAS Nagar, Mohali, have declined the relief of injunction to the plaintiffs qua khasra No. 24//13 (4-14), for the reason that a Samadh of Pir Naun Gaza exists there. However, a careful perusal of the pleadings of the plaintiffs goes to show that they had claimed injunction with respect to area of 3 kanal 14 marlas out of total area of 4 kanal 14 marla comprised in Khasra Number 24//13 and not with respect to entire area of 4 kanal 14 marla.

Here reference to the revenue record would be quite relevant. A look at jamabandi for the year 1996-97 Exhibit P-1, goes to show that in the ownership column there is an entry of Shamlat Taraf Neelee Hasad Rasad Zar Khewat Isatnai Malkan Kabja, i.e. it is so with respect to the remaining suit land. In possession column, names of plaintiffs find mention. With respect to Khasra Number 24//13 (4-14), an area of 1 kanal is mentioned to be 'Gair Mumkin kabar', whereas remaining area of 3 kanal 14 marla is mentioned to be barani, going to show that nature of the land was agricultural. The plaintiffs had sought injunction with respect to 3 kanal 14 marla of land only out of khasra Number 24//13 and not with respect to total area of 4 kanal 14 marlas. The plaintiffs being shown to be in possession of 3 kanal 14 marla of land, injunction ought to have been granted to them with respect to that area also, which was wrongly declined to them by the Courts below. The Courts below had mis-appraised the evidence especially the revenue record and by wrong interpretation of law,

declined injunction with respect to the area of 3 kanal 14 marla out of Khasra No. 24//13, to which the plaintiffs were entitled. Therefore, the appeal i.e. RSA 4893-2012, filed by the plaintiffs stands accepted. The judgments and decrees by the Courts below are modified and suit of the plaintiffs is decreed in toto for grant of permanent injunction with respect to the entire suit land.

**28.03.2019**  
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**( H.S. Madaan )**  
**Judge**

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|-----------------------------|----------|
| Whether speaking / reasoned | Yes / No |
| Whether reportable          | Yes / No |