

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5054 of 2012 (O&M)

Date of Decision : November 29, 2019

Sukhwinder Singh

...Appellant

Vs.

Jaswant Singh & Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Mr. S.S.Rangi, Advocate for the Appellant.

Mr. K.S.Boparai, Advocate for Respondents No.1 & 2.

Ms. Samina Dhir, Deputy Advocate General, Punjab.

SUDIP AHLUWALIA, J.

This Appeal has been preferred against the Judgment and Decree passed by the Ld. Addl. District Judge, Ludhiana in Civil Appeal No.70 of 2010 dated 03.08.2012, vide which, the original Judgment & Decree dismissing the Civil Suit filed by the Appellant were upheld.

2. The Suit was filed by the Appellant, who had claimed that the Central Government is the owner of land measuring 36 K 14 M comprised in Khewat No.63, Khatauni No.136, Killa No.31//15 min, 16 min, 17, 18, 23, 24 as mentioned in the Jamabandi for the year 1999-2000 situated in village Hadiwal, Tehsil & District Ludhiana and he is in actual physical & cultivating possession of the disputed land. It has been averred that Pritam Singh son of Khushi Ram was originally cultivating the said land and he handed over its possession to the Appellant. He had deposited the land revenue and said Pritam

Singh had also given an affidavit and an Agreement in his favour. It has been further averred that the Respondents have no legal Right, Title or Interest in the suit property and without any right of justification, they were threatening to dispossess and to interfere in the peaceful possession of the Appellant over the disputed land illegally, forcibly and without due course of law. Hence, the present Suit.

3. The Respondents contested the Suit by filing their Written Statement(s), in which it was claimed that the possession of disputed land, which originally belonged to Respondent No.2 since prior to 1967-68. The Respondents had been cultivating the said land continuously thereafter and had also been paying Chakota to the Central Govt.; and that neither the Appellant nor his alleged Predecessor Pritam Singh had ever any Right, Title or Interest in the said property, and that they had however, manipulated the Revenue records and changed the entries in the name of Pritam Singh, although the Fard Jamabandis in favour of Respondents had all along stood in their favour for the years 1974-75, 1979-80 and 1984-85. It was also contended that Pritam Singh could never have passed on possession of suit land to Appellant on the basis of any alleged affidavit or Agreement, since he himself was never in possession thereof.

4. After going through the evidence led on behalf of both the sides, the Ld. Trial Court dismissed the Suit of Appellant by noting that from his side, he had produced the Jamabandi for the year 1999-2000 (Ex.P-1), in which the name of Pritam Singh son of Khushi Ram was recorded in the Column of possession, as also Jamabandi for the

year 2004-05 (Ex.P-8), in which the Appellant's own name was recorded in the column of possession. In addition, Khasra Girdawari for the year 2002 till Rabbi 2004 (Ex.P-2) was also led into evidence from his side. The name of cultivator recorded therein was Pritam Singh till Khariiff 2003, after which the Appellant's own name was incorporated in the column of possession on the basis of Rapat No.24 dated 22.9.2002.

5. The Ld. Trial Court nevertheless placed greater reliance upon the documentary evidence led from the side of Respondents/Defendants as noted in the following extracts of its impugned Judgment -

“16. As against the evidence of the plaintiff, defendant himself stepped into witness box as DW1. He was subjected to lengthy cross examination. However, nothing favourable to the plaintiff came out from his mouth. Defendant has also examined Santokh Singh as DW2 who has categorically deposed in his cross examination that he has seen Surjit Singh cultivating the property. More importantly defendant has examined Gurdeep Singh Halqa Patwari village Hadiwal as DW3 who deposed that Khasra girdawari from 1975 till 'Khariiff' 1980 has been in the name of Surjit Singh and Khasra girdawari with regard to khasra no.31//15, 16, 17, 18 has been changed and this girdawari has been changed without any order of Tehsildar or that of the Court or without any rapat number. He further deposed

that change was made in Khasra No.31/23 and 24 in 'Khariff' 1987 and rapat no.224 is recorded. However, no order has been recorded and khasra girdawari 1998 'Rabbi' in the name of Pritam Singh. However, there is no rapat number on the record and there is no order of Tehsildar or of the civil court to change the girdawari and then girdawari has been changed from the name of Pritam Singh to Sukhminder Singh on the basis of rapat no.24 and in his report there is no order of the civil court to change the girdawari. As such, this witness has categorically deposed that the change of khasra girdawari which was initially in the name of Surjit Singh as is clear from jamabandi Ex.DW3/A, khasra girdawari Ex.DW3/C (in which name of the defendant no.2 has been reflected with regard to property khasra no.31//16min) khasra girdawari Ex.DW3/E, Ex.DW3/H, has been changed without any order of the civil court or that of the concerned Tehsildar. This witness has also deposed that khasra girdawari can be changed either of the order of Halqa Tehsildar or at the order of the Civil Court. As such, from the evidence brought on record by the defendant, it is very well clear that name of Harjit Singh then of Pritam Singh and then of present plaintiff has been brought in the revenue record without any order of the civil court or without any order of Halqa Tehsildar. It is well settled principle of law that before

change in the Khasra girdawari, notice to the person who are likely to be adversely affected by such a change of entry should be given. This view has been affirmed by our own Hon'ble High Court in case titled as Harji & another Vs. Smadh Baba Vijay Ram Chela Mangal Dass 2003(2) CCC 648 (P&H), it has been held that -

“Khasra girdawari-change of entries- prior notice in writing has to be given to the person or persons likely to be adversely affected by the change in khasra girdawari.”

In the present case when name of defendant no.2 was appearing in the column of possession, then the concerned Patwari was required to give notice to the defendant no.2. Although the name of plaintiff is reflected in the revenue record to show his possession and his suit is also based on these revenue record. However, as discussed above the entries in the revenue record are not incorporated by following the due procedure of law and as such no reliance can be placed upon them.”

6. After going through the available material including the oral and documentary evidence recorded in the Trial Court, and considering the submissions and Citations of both sides, this Court finds no tangible reason to take a different view from that of both the Ld. Courts below in deciding in favour of the Respondents. That the Land in question originally belonged to Rehabilitation Department of

Central Govt. is not in dispute. However, by virtue of the Punjab Package Deal Properties (Disposal) Act, 1976 (hereinafter referred to as 'the Act'), the same was passed on to the State of Punjab and Revenue entries pertaining to the same were accordingly drawn up. Undisputedly, the original entries including the Khasra Girdawari from 1975 onwards till 1985 were in the name of Respondent Surjit Singh. As rightly observed by both the Ld. Courts below, when admittedly the Revenue entries stood in the names of the Defendants, it was incumbent upon the Plaintiff's side to show how the same were got changed in favour of Pritam Singh, the purported Predecessor-in-interest of the Plaintiff/Appellant at a subsequent stage. Admittedly, there was no order of either the concerned Halqa Tehsildar or of the Civil Court on the basis of which, the Revenue entries were changed nor there is any indication that Defendant Surjit Singh was ever notified before effecting such changes. On the other hand, Ex.D-5 which happens to be a certified copy of the Final Order passed by the Ld. Sub Judge Ist Class, Ludhiana in CS No.682 of 29.10.1982 on 6.1.1983, goes to show that even the State Govt. and the Tehsildar (Sales) Ludhiana had been restrained from interfering with the peaceful possession of the said Plaintiff (Defendant Surjit Singh) over the suit land except than in due course of law.

7. In such situation, change of the Revenue entries in the name of Pritam Singh and thereafter the present Appellant without notifying of hearing the Respondent Surjit Singh are deemed to be inconsequential in view of the decision of this Court in '**Harji & another Vs. Smadh Baba Vijay Ram Chela Mangal Dass'** 2003(2)

CCC 648 (P&H), which has been correctly quoted by the Ld. Courts below. Even otherwise, there is no material to indicate how the present Appellant/Plaintiff derived his individual Right, Title and Interest in the disputed land even assuming that at any time, the Revenue entries had stood in the name of Pritam Singh through whom, he claims his right. Consequently, no grounds are made out to interfere with the impugned decisions of both the Ld. Courts below. The Appeal is therefore, dismissed. Parties to bear their own costs.

(SUDIP AHLUWALIA)
JUDGE

November 29, 2019
AS

- | | |
|--------------------------------|--------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |