

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

RSA-2062-2013(O&M)

Date of decision:-22.10.2019

Swaranjit Kaur and others

...Appellants

Versus

Vijay Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Nagra, Advocate
for the appellants.

Mr.Saurabh Garg, Advocate
for the respondent.

H.S. MADAAN, J.

In nutshell, facts of the case are that plaintiff Vijay Singh son of Waryam Singh, presently residing at Chandigarh had brought a suit against defendant Sukhdev Singh son of Gurbachan Singh (since deceased) represented by his legal representatives i.e. widow – Smt.Swaranjit Kaur and sons – Harpartap Singh and Gurpartap

Singh, residents of Patti Jhambra Shahabad, Tehsil Shahabad, District Kurukshetra, seeking a declaration that entries of the defendant being in possession as 'Gair Marusi' in various jamabandis 1969-70 till date are illegal, null and void, not binding upon the rights of the plaintiff and other co-sharers, with a direction to the defendant to hand over the vacant possession of the land measuring 10 kanals 2 marlas comprised in khewat No.150 min, khatoni No.151 min, rect. No.58 and khasra No.27/1 by passing a decree for possession, in addition to that asking for grant of mesne profits for the use and occupation of the suit property besides costs of the suit.

As per the version of the plaintiff, agricultural land measuring 11 kanals 5 marlas comprised in Khewat No.150, khatoni No.151/1, rectangle No.167(1-3), rectangle No.58, khasra No.27/1(10-2) situated at Patti Jhambra Shahabad (M), Tehsil Thanesar, District Kurukshetra was owned and possessed by Waryam Singh, father of the plaintiff along with other co-sharers in terms of the jamabandi for the year 1965-66; that while preparing jamabandi for the year 1969-70, the defendant Sukhdev Singh got a wrong entry incorporated in the jamabandi in collusion with revenue officials regarding his possession over land bearing rectangle No.58, khasra No.27/1(10-2), as 'gair marusi', although the said land was never leased out to the defendant Sukhdev Singh by owners of the land; that Waryam Singh has expired and his estate was inherited by

his son, the plaintiff being his sole legal representative; the defendant had purchased 1 kanal 1 marla of land i.e. 6/63 share in the suit land along with his brothers vide registered sale deed dated 19.11.1981 and by virtue of said sale deed, he had become co-sharer in the suit property; that the plaintiff being tenant over the suit property had preempted the said sale and suit for pre-emption filed by him was decreed on 1.8.1984; the plaintiff had deposited the entire pre-emption amount as per decree passed by the Court on 28.9.1984; the amount was deposited in the Court itself in terms of the decree and such amount has already been withdrawn by the defendant and his brother, therefore, the defendant was not left with any right in the suit property; that the plaintiff had filed an execution application in which the Executing Court could not deliver the possession of 1 kanal 1 marla i.e. 6/63 shares out of the suit property since the land was not partitioned amongst the co-sharers and the portion which was to be delivered to the plaintiff could not be specified being share of the khewat, although symbolic possession had been delivered to him regarding the said share vide Court order dated 6.6.2000. According to the plaintiff, the defendant has been in illegal possession of land bearing rectangle No.58, khasra No.27/1 out of the suit property against the wishes of plaintiff and other co-sharers without making any payment to the plaintiff and other co-sharers, therefore, he is liable to pay mesne profits to be determined by the Court under

Order 20 Rule 12 CPC; that when the defendant refused to admit the claim of the plaintiff and to hand over the vacant possession of the land besides paying mesne profits, the plaintiff brought the suit in question.

On notice, the defendant appeared and filed a written statement contesting the suit taking up various legal objections including with regard to locus standi of the plaintiff to bring the suit, maintainability of the suit, plaintiff not having any cause of action to file the present suit; that the plaintiff was estopped by his own act and conduct from filing the suit; that the Civil Court does not have jurisdiction to entertain and try the suit; that the suit being bad for non-joinder and mis-joinder of the necessary parties; that the plaintiff had concealed true and material facts from the Court; suit being not properly valued for the purpose of Court fee and the suit being time barred etc. According to the answering defendant, the father of the plaintiff was not owner of the land along with other co-sharers and entry in the jamabandi in favour of the defendant was legal and correct; that he is in possession as tenant of said land since long; that defendant and his brother had purchased some land vide sale deed dated 19.11.1981 and he is tenant over land comprised in rectangle No.58 khasra No.27/1(10-2); that the plaintiff never remained tenant on the suit land and decree dated 1.8.1984 is not binding on the defendant. So far as right of tenancy is concerned, the plaintiff had filed an

execution and has taken the symbolic possession of the land vide report No.147 dated 6.11.1984 and also got entered the mutation of the decree and the execution was decided as fully satisfied, thereafter, the plaintiff had filed a second execution petition in the Court for getting the actual possession of the suit land, which was dismissed by the Court, therefore principle of *res judicata* is applicable and the plaintiff has no right to file the suit and to take the possession from the defendant; that only partition suit is maintainable against the other co-sharers. Refuting the remaining assertions in the plaint, the defendant prayed for dismissal of the suit.

Since the defendant had expired during pendency of the suit, his legal representatives were brought on file.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to a decree for declaration to the effect that entries of the defendant regarding possession as Gair Marusi in various jamabandi 1969-70, up till today is illegal, null and void and not binding on the rights of the plaintiff and other co-sharers. If so to what effect? OPP.
2. Whether the plaintiff has no locus standi to file the present

suit? OPD.

3. Whether the suit is not maintainable? OPD.
4. Whether the plaintiff is estopped by his own act and conduct?
OPD.
5. Whether the plaintiff has no cause of action to file and maintain the present suit? OPD.
6. Whether this Hon'ble Court has no jurisdiction to entertain and try this suit? OPD.
7. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD.
8. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD.
9. Whether the suit is hit by the principle of resjudicata? OPD.
10. Whether the suit of the plaintiff is hopelessly time barred?
OPD.
11. Whether the plaintiff has concealed the true and material facts from the Hon'ble Court? OPD.
12. Relief.

Vide order dated 7.9.2010, following additional issues were framed:

1(A) Whether the plaintiff is entitled to the relief of possession of suit property as prayed in the plaint? OPP.

1(B) If issue No.1 and 1(A) are proved, whether plaintiff is entitled

to mesne profits from defendants regarding illegal use and occupation? If so, at which rate and from which period to which period? OPP.

Both the parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court decided issues No.1, 1(A) and 1(B) in favour of the defendant and against the plaintiff, issues No.2 and 3 in favour of the plaintiff and against the defendants, issue No.6 in favour of the plaintiff and against the defendants, issues No.4, 5, 7, 8, 9 and 11 against the defendants, issue No.10 in favour of the defendants and against the plaintiff. Resultantly vide judgment and decree dated 8.10.2010 the suit of the plaintiff was dismissed by the trial Court with costs.

Feeling aggrieved by the said judgment and decree, the plaintiff filed an appeal in the Court of District Judge, Kurukshetra, which was assigned to Additional District Judge, Kurukshetra, who vide judgment and decree dated 25.1.2013 accepted the appeal partly observing that entries in favour of respondent/defendant as 'Gair Marusi' in the jamabandi for the year 1969-70 onwards are illegal, null and void and the appellant-plaintiff is also entitled to the possession of the land measuring 10 kanals 2 marlas.

Being dissatisfied with the judgment and decree passed by Additional District Judge, Kurukshetra, the legal representatives

of the defendant have filed the present regular second appeal before this Court, notice of which was issued to the respondent-plaintiff, who has appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

I find that the judgment passed by learned Additional District Judge, Kurukshetra is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and impugned judgment and decree do not suffer from any illegality or infirmity. Whereas the judgment and decree passed by the trial Court were not sustainable since the trial Court had not properly appreciated the legal and factual position of the case. The crucial thing to be seen is the nature of possession of the defendant/his legal heirs whether the same is legal or otherwise and if legal in what capacity. From the record, it comes out that the possession of the defendant is illegal and unauthorized. As regards, the entry in the revenue record reflecting him as Gair Marusi, the same cannot be taken to confer the status of tenant upon the defendant. As has been noticed it is general practice amongst the revenue officials preparing the revenue record to show a person in possession, who is not a owner as Gair Marusi. In the judgment referred to by learned counsel for the respondent, which is by a Co-ordinate bench of this Court titled **'Mandi Adampur Co-operative**

Society Ltd. Versus Mohar Singh (2019) 1 RCR(Civil) 185', it has been observed that the revenue authorities started referring to the person as gair marusi because the authorities were not certain as to what is the status of the person in possession, therefore word gair marusi itself cannot determine the status of the person in possession as tenant when nature in column No.9 does not support the case of the plaintiffs. Hence the plea taken by the defendant that he has been in possession as tenant since long does not seem to be convincing since it has nowhere been dilated as to when tenancy of defendant started under whom, what was the rate of rent settled, whether any document was prepared at that time, to whom the defendant had been paying rent/lease money, the quantum thereof, whether any receipt is being issued by the alleged landlord or not etc.

Since the defendants in this case have neither taken any plea of adverse possession nor proved the same, therefore the plaintiff being a co-sharer had a right to sue for possession and suit so filed by him cannot be held to be without locus standi or time barred.

As regards the submission made learned counsel for the appellants that in the jamabandi for the year 1979-80 Ex.P11, defendant was shown as tenant @ Rs.75/- per month. However, as has been noticed by the First Appellate Court in judgment copy Ex.P16, it had been observed that the plaintiff/appellant had a

superior right of pre-emption by virtue of relationship with the vendor. The First Appellate Court has dealt with the matter in a very minute manner noting that in copy of plaint in Civil Suit No.777/82 Ex.P1 filed by the plaintiff claiming tenancy over the suit land, in corresponding para of the written statement Ex.P2, there was merely a denial and there was no claim of tenancy and further the finding recorded in Ex.P16 is binding upon Sukhdev Singh – defendant wherein it was held that Vijay Singh was a tenant over the suit land and vide order dated 6.6.2000 symbolic possession of the suit land had been delivered to Vijay Singh being in possession as co-sharer. The defendant had not raised any such plea in the written statement and he could not establish that judgment and decree had been obtained by plaintiff/appellant by playing fraud upon respondent.

With regard to the objection that since the plaintiff was not in possession of the suit land, he could not seek correction of revenue record and suit as filed by him was not maintainable and he should have filed a suit for ejectment under under Section 9 of the Punjab Security of Land Tenure Act, besides coming to Civil Court whose jurisdiction was barred, the First Appellate Court has dealt with the matter in a proper and detailed manner in paras No.13, 14 and 15, coming to the conclusion that defendant had failed to establish that he is in possession as tenant or otherwise and that his possession is legal. He could not establish that he has been paying

any rent to the plaintiff – owner. In the judgment ***Mandi Adampur Co-operative Society Ltd.*** (supra), it had been observed that the rent cannot be @ Rs.1.59 per acre per year and it is not possible to believe that lease money of Rs.1.59/- was agreed to for one acre of land which consist of 8 kanals and still further, column No.9 refers to land revenue and not the rent; the suit was filed in 2007 i.e. after a period of 37 years and not even a single receipt of payment of rent has been produced rather this fact had been admitted by one of the plaintiff, who had appeared in evidence.

Learned counsel for the appellants has referred to judgment ***Lehna Singh and others Versus Ram Singh and others, 1981 PLJ 470*** by a Single Bench of this Court wherein it was observed that a suit for declaration by a person not in possession of suit property is not maintainable under Section 45 of Punjab Land Revenue Act, 1887. However, this does not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

Under the circumstances, the First Appellate Court of Additional District Judge, Kurukshetra was justified in decreeing the suit of the plaintiff partly, which claim had been wrongly rejected by the trial Court.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal

and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Kurukshetra.

The appeal stands dismissed accordingly.

22.10.2019

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No