

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

**RSA No.1384 of 2016 (O&M)
Date of Decision.07.03.2019**

Balbir Singh

...Appellant

Vs

Darshan Singh Jaswal and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anil Chawla, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.3881-C of 2016

For the reasons stated in the application, delay of 10 days
in filing of the appeal is condoned.

Application is allowed.

RSA No.1384 of 2016

It is a classic case where the appellant-plaintiff had wasted time of the Court in filing suit challenging decree of 1999, which in fact was in his favour as the categoric case of the plaintiff Gian Singh in the previous civil suit of 1997 was to the effect that Gian Singh and Teja Singh had been in possession, which fact had been acknowledged by the Court below while restraining the defendants Harbans Singh, and Baldev Singh sons of Bhagwant Singh, Agya Kaur widow of Bhagwant Singh from taking forcible possession. It is not comprehensible as to how and under what manner appellant-plaintiff Balbir Singh son of Teja Singh was aggrieved of the injunction order, as injunction order already protected his possession as well. For the sake of brevity, finding in

the judgment and decree of the trial Court in paragraph 9 and 18 reads as under:-

“9. I have given a careful thought to the submissions of Ld. Counsel for the parties. Admittedly plaintiff Gian Singh along with his brother Teja Singh is shown in cultivating possession of the suit land. In his statement on oath defendant Harbans Singh alleged that entries in Jamabandi and Khasra Girdawari regarding possession are wrong meaning thereby that he also admits that as per revenue record plaintiff and his brother Teja Singh are shown in cultivating possession of the suit land. Plaintiff has proved Jamabandi for the year 1986-87 Ex.PW6/1, perusal of which makes out that suit land is owned by defendants being successors of Bhagwant Singh but column 5 of Jamabandi depicts possession of Teja Singh and plaintiff Gian Singh over it. Perusal of column No.9 of the Jamabandi makes out that the tenants Teja Singh and Gian Singh were imposed a lagan of Rs.183/- per year, thus making out that plaintiff Gian Singh and his brother Teja Singh are tenants in the suit land. Perusal of Khasra Girdawari for the year Kharif 1987 to Kharif 1988 Ex.PW/2 and Khasra Girdawari of the subsequent period Ex.PW6/3 & Ex.PW6/4 further make out that Gian and his brother Teja Singh are shown in possession of the suit land. Ld. Counsel for defendant submitted that suit land is no

more under cultivation and plots have been carved out and the entire property has come under construction. In this regard he also drew my attention towards Khasra Girdawari Ex.PW6/2 wherein the suit has been described as Gair Mumkin and Kable Tamil but I find that the Jambandi for the year 1986-87 Ex.PW6/1 mentioned the suit land as Chahi except Khasra No.4(6-19) meaning thereby that suit land was under cultivation and the course of cultivation was canal water. Hence it appears that earlier suit was under cultivation but subsequently due to expansion of population the suit land has also been put to some non-agricultural use but this fact in itself does not make out that plaintiff has concealed some material facts. As per basic law once a tenant is always a tenant. Change of user by a tenant may be a good ground to seek his ejectment but change of land of use from agriculture to construction in itself cannot erode the status of a tenant.

18. Relief

In view of my above said discussion especially discussion on issue No.2 suit of the plaintiff is decree and the defendants are permanently restrained from taking forcible possession of land measuring 26 kanals 16 marlas (fully described in the head-note of the plaint) situated in the revenue estate of Amritsar Sub-urban except in due course of law. In view of peculiar

circumstances of the case parties are left to bear their own costs. Decree sheet be prepared. File be consigned to the record room.”

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out, though the suit was liable to be dismissed with costs. Resultantly, the second appeal is dismissed.

**(AMIT RAWAL)
JUDGE**

March 07, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No