

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

RSA-2891-2015(O&M)

Date of decision:-27.11.2019

Rajender Prashad

...Appellant

Versus

Bajrang Lal

...Respondent

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

Present: Mr.S.N.Saini, Advocate
for the appellant.

Mr.Rakesh Gupta, Advocate
for the respondent.

H.S. MADAAN, J.

CM-7030-C-2015

Heard.

For the reasons mentioned in the application, the same is
allowed and delay of 91 days in filing of the appeal stands condoned.

RSA-2891-2015(O&M)

Briefly stated, facts of the case are that plaintiff Bajrang
Lal, resident of Hisar had brought a suit against Rajender Prashad, a
resident of Dhani near Jalwala Johar village Kumhariya, Tehsil and
District Fatehabad seeking a decree for permanent injunction
restraining the defendant from interfering into the cultivating

possession of the plaintiff over the land comprised in khasra Nos.110//4 min (7-16), 5(7-8), 6(7-8), 7(8-0), 14(8-0), 15(7-8), 16/2(1-8), 17(8-0), 111//10/2(6-12), 11(8-0), 12/1(6-2), 11(8-0), 12/1(6-8), 125//19/2(2-0), 22/2(5-0), 23/2(2-9), 24/2(2-9) measuring 88 kanals 6 marlas situated in village Kumhariya, Tehsil and District Fatehabad and dispossessing him therefrom besides craving for grant of mandatory injunction directing the defendant to vacate the Dhani of plaintiff constructed in khasra No.110//4 min (0-4) situated at village Kumhariya, Tehsil and District Fatehabad.

As per the version of the plaintiff, he is owner in possession of the suit land and had constructed his 'Dhani' (Farm-House) therein; he was residing in the said 'Dhani' along with his family members; that the defendant happened to a real brother of the plaintiff; the plaintiff, defendant and their other brother Sh.Pawan Kumar besides Smt.Roshni wife of plaintiff and Smt.Krishna wife of the defendant along with Sunil Kumar son of defendant were booked in a murder case and put behind bars; after the trial Smt.Roshni and Smt.Krishna besides Sunil Kumar were acquitted by Sessions Court, Fatehabad, whereas plaintiff, defendant and Pawan Kumar were convicted; the plaintiff and Pawan Kumar were released on bail by the High Court but the defendant was not granted that concession; in the month of August, 2011, the plaintiff, defendant and Pawan Kumar were acquitted by the High Court; after release from the jail

in the month of August, 2011, the defendant had requested the plaintiff that he was in need of residence; since the plaintiff had shifted his residence to Hisar, the said 'Dhani' was lying vacant, therefore the plaintiff permitted the defendant to reside in the said 'Dhani' in the month of August 2011; the defendant had been residing therein as a licensee ever since; subsequently a dispute arose between the parties and the defendant threatened to interfere in cultivating possession of the plaintiff over the suit land; accordingly the plaintiff revoked the licence of the defendant asking him to hand over the vacant possession of 'Dhani' to him but to no effect, rather he threatened to dispossess the plaintiff from the suit land and to alienate the specific khasra numbers, giving rise to a cause of action to the plaintiff to bring the suit.

On notice, the defendant appeared and filed written statement contesting the suit raising various legal objections, on merits contending that Shankar Lal father of the parties was owner of the land out of which he had transferred 2/3 share of the land comprised in khewat No.200 khatauni No.354 katas 41 measuring 262 kanals 8 marlas as per jamabandi for the year 1969-70 in favour of his minor sons Rajender Prashad defendant and Bajrang Lal plaintiff in equal shares vide civil Court decree dated 3.1.1970 on the basis of which mutation No.1980 was sanctioned in favour of the beneficiaries on 28.5.1970; Shankar Lal in order to avoid his land

being declared surplus thought to transfer some land in favour of his mother Sugni Devi, therefore he asked his son Rajender Prashad – defendant, who was looking major to transfer his share of the said land in favour of Sugni Devi; Shankar Lal and Bajrang Lal had promised to compensate the defendant later on; taken in by such promise, the answering defendant transferred his 1/3 share in the land measuring 262 kanals 8 marlas in favour of Sugni Devi wife of Nand Lal, mother of Shankar Lal vide civil Court decree dated 2.5.1972 passed in Civil Suit No.263 titled 'Smt.Sugni Versus Rajender Prashad etc.'; Shankar Lal had also transferred his 1/6 share in the land in favour of Sugni Devi, remaining 1/6 share in the land was transferred by Shankar Lal in favour of Maina Devi vide a separate Civil Court decree on the basis of which mutation No.2067 was sanctioned, resultantly in the revenue record, Sugni Devi become owner of 1/2 share, Maina Devi 1/6 share, Bajrang Lal become owner of 1/3 share of the total land measuring 262 kanals 8 marlas; on partition vide mutation No.2098 sanctioned on 10.6.1973, Sugni Devi became the owner of land comprised in Khewat No.214 khatauni No.361 measuring 131 kanals 10 marlas; Maina Devi became the owner of land comprised in khewat No.215 khatauni No.362 measuring 43 kanals 0marla and Bajrang Lal – plaintiff had become owner of land comprised in khewat No.216 khatauni No.263 bearing khasra Nos.110//4 min (8-0), 5(7-8), 6(7-8), 7(8-0), 14(8-0),

15(7-8), 16/2(1-8), 17(8-0), 111//10/2 (6-0), 11(8-0), 12/1(6-8), 125//19/2(2-0), 22/8(5-0), 23/2(2-9), 24/2(2-9) measuring 87 kanals 18 marlas situated at village Kumhariya, Tehsil and District Fatehabad as per jamabandi for the year 1974-75.

In the written statement, the defendant has further pleaded that in the year 1984 in a Panchayat comprising of relatives and others in presence of Shankar Lal, Bajrang Lal – plaintiff and defendant Rajender Prashad, 63 kanals 12 marlas of land standing in the name of Bajrang Lal was given to Rajender Prashad – defendant to compensate him as per their promise and since the year 1984 Rajender Prashad along with his family is residing in the 'Dhani' consisting of many rooms, kitchen, verandah and staircase and electric meter standing in the name of Sunil son of Rajender Prashad; ration card and voter cards of defendants are having address of Dhani comprised in Killa No.110//4 and remaining land out of 63 kanals 12 marlas is under cultivation and in possession of the defendant and his family since the year 1984 as owner in possession in lieu of land measuring 87 kanals 18 marlas transferred by the defendant vide Civil Court decree dated 2.5.1972 suffered by him in favour of Sugni Devi at the instance of his father Shanker Lal and brother Bajrang Lal. In the end, the defendant prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendant from interfering into the cultivating possession of the plaintiff and also for mandatory injunction directing the defendant to vacate the Dhani of plaintiff? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no locus standi to file the present suit? OPD.
4. Relief.

In order to prove her case, the plaintiff had got recorded his statement as PW1 besides tendering certain documents.

On the other hand, the defendant had appeared as DW1 and he also tendered some documents.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against the defendant, issues No.2 and 3 against the defendant and in favour of the plaintiff. Resultantly, the trial Court vide judgment and decree dated 16.5.2013 decreed the suit and the defendant was restrained from interfering into the peaceful possession of the plaintiff over the suit land and further directed to hand over the vacant possession of the suit property i.e. Dhani existing on khasra No.110/4 min(0-4) within two months from the date of passing of judgment and decree.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal before District Judge, Fatehabad, which was assigned to Additional District Judge, Fatehabad, who vide judgment and decree dated 7.11.2014 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendant has filed the present regular second appeal before this Court, notice of which was issued and the respondent plaintiff has appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the appeal.

The trial Court on analysis of the factual and legal position has come to the conclusion that the revenue record reflects the ownership and possession of the plaintiff over the suit land. The defendant has not been able to prove his version by bringing enough cogent and convincing evidence. The alleged family settlement arrived at between the members of alleged joint Hindu family vide which land measuring 63 kanals 12 marlas had statedly been transferred to the defendant is not reflected in the revenue record. The Civil Court decree dated 3.1.1970 has not since been set aside. Coming to the possession part, the same is dealt with in a very proper and appropriate manner by the trial Court in para No.18 of the judgment, which for ready reference is reproduced as under:

18. Now comes the issue of possession over the suit property i.e. the Dhani constructed over the land bearing khasra no.110//4 min (-0-4). The defendant alleges that this Dhani was constructed by him. But the vague replies given by the defendant in his cross-examination, make it explicit that the defendant did not participate in the construction of the said Dhani. He fails to state the brick-kiln from which the bricks were procured to raise the construction; he fails to stated the quantity of sariya (iron garters) used in the said construction; he fails to states the number of masons engaged for raising the said construction; he fails to state the quality of cement used in that construction; he fails to produce a single cash memo connected with the construction materials used for raising that Dhani. The case of the plaintiff is that he licenced the defendant to reside in the said Dhani in August 2011, for residential purpose only because the defendant was released from jail in August 2011. This fact is admitted by the defendant that he was released from jail in year 2011. He has not denied that the plaintiff had been residing at Hisar. The failure of defendant to produce even a single witness in support of his averments that he raised the said Dhani and that he

has right to reside therein and his failure to adduce reasonable answers to most of the questions connected with the construction of said Dhani and establishing his connectivity with the same, lead to an inference that in fact, the defendant was only allowed to reside in the said Dhani, by way of licence and that the averments of the plaintiff itself out-rightly prove that the said licence stands revoked. Meaning thereby that, the defendant has no right to continue his possession over the said Dhani.

Coming to the judgment passed by Additional District Judge, Fatehabad. The lower Appellate Court has held that the oral testimony of the defendant with regard to alleged family settlement is not supported by any document and it is not established that 63 kanals 12 marlas of land was given to the defendant. Reference to the jamabandi for the year 2009-10 Ex.P1 has been given where the plaintiff is shown to be in cultivating possession over the land measuring 89 kanals 1 marla including 63 kanals 12 marlas of land, which is subject matter of the present litigation. It has further been observed that the Civil Court judgment and decree in favour of the plaintiff Bajrang Lal was never challenged by the defendant Rajender Prashad and he has himself failed to show that he has been in possession of the suit property since oral transfer was neither

implemented nor reported to revenue officer.

As regards *nehri girdawari* Ex.D6 placed on record by the defendant, the plaintiff had placed on record *khasra girdawari* Ex.P2 showing him to be in possession of the suit property. There being conflict between *nehri khasra girdawaris* prepared by the Irrigation Department under the Canal and Drainage Act and the *khasra girdawaris* prepared by the Revenue Department under the Punjab Land Revenue Act, the *khasra girdawaris* prepared by the Revenue Department is to be given preference in view of judgment taken note by lower Appellate Court i.e. **Sube Singh and others Vs. Bishan Singh and others 200(3)RCR(Civil) 655.**

As regards the maintainability, the First Appellate Court has observed in para No.19 as under:

*19. So far as the contention of learned counsel for the appellant regarding maintainability of the suit for mandatory injunction is concerned, admittedly, the respondent has filed the suit for possession on the basis of title. In the case titled **Ram Murti Vs. Smt.Sarla Devi 1998(2) PLJ 641**, it has been held by Hon'ble Punjab & Haryana High Court that even if the suit for possession though filed in the shape of suit for mandatory injunction, the same is maintainable. The learned counsel for the appellant has relied on the case titled*

Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs & Ors.(supra), however the aforesaid authority is of no help to the appellant as in that case, the plaintiff filed a suit for possession purely on the basis of title who claimed to be the owner in pursuance of oral gift whereas the defendant claimed his title on the basis of revenue record, so it was held that suit for declaration is maintainable and not a suit for simple injunction.

The concurrent findings on the issues so recorded by the Courts below do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

No substantial question of law arises in this appeal.

It being so and in view of the concurrent findings returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed accordingly.

27.11.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No