

In the High Court of Punjab and Haryana at Chandigarh

RSA-1444 of 2013(O&M)

Date of Decision:1.4.2019

Tara Chand and others

---Appellants

vs.

Siri Pal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Amit Jain, Advocate
for the appellants
Mr. Harsh Bhardwaj, Advocate for
Mr. N.S.Shekhawat, Advocate
for respondents No. 1, 3, 4, 6 and 7

Rekha Mittal, J.

Challenge in the present appeal has been directed against consistent findings recorded by the courts whereby suit for permanent injunction filed by the appellants-plaintiffs was dismissed by the trial court vide judgment and decree dated 25.3.2011 and appeal preferred by unsuccessful plaintiffs did not find favour with the Additional District Judge, Gurgaon.

The plaintiffs claimed themselves to be owner in possession of land, detailed in para 2 of the judgment of trial court. It is averred that they are cultivating the suit land as co-owners, plaintiffs No. 2 to 4 inherited the suit land from their father Sh. Banarsi Dass who expired on 1.2.1996 and mutation No. 7115 was sanctioned in their favour. Plaintiffs No. 5 to 9 inherited the suit property from Sh. Ram Avtar who expired on 2.5.1984 and

mutation No. 46560 was sanctioned in their favour. It is submitted that the respondents-defendants threatened to dispossess the plaintiffs from suit property illegally and forcibly. The defendants are numerous persons who are biswedars of Pana Palan mauja Jatauli. They are being sued in representative capacity under Order 1 Rule 8 of the Code of Civil Procedure through defendants No. 1 to 5.

The respondents-defendants filed the written statement and challenged maintainability of the suit. It is pleaded that at one place, they are claiming themselves to be co-owners in the suit land and on the other hand they are claiming to be owners in possession of the suit land which is totally wrong. The suit of the plaintiffs is barred by principle of res judicata in view of decision dated 21.11.1992 by the Additional Senior Sub Judge, Gurgaon in suit No. 144 of 5.3.1991 titled “Rajbir Singh vs. State of Haryana”. It is claimed that suit land is jointly owned and possessed by all the proprietors of 'shamlat Pana Palan Hasab Rasad Arazi'. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The controversy between the parties led to framing of issues, reproduced in para 5 of the judgment of trial court. The parties were permitted to adduce evidence in support of their respective contentions. The evidence led by the parties both oral and documentary finds reference in paras 6 to 8 of the judgment of trial court.

Having heard counsel for the parties in the light of materials on record, the trial court rejected claim of the plaintiffs that they are in exclusive possession of land comprising different khasra numbers alleged to

have been in possession of different sets of plaintiffs and accordingly, the suit was dismissed. The trial court relied upon judgment dated 21.11.1992 Ex. D4 and rapat/order Ex. D1 and subsequent entries of khasra girdawaris Ex. D2, D3, D6, D7 and D9.

As has been noticed hereinbefore, the appellate court affirmed findings of the trial court and dismissed the appeal preferred by the plaintiffs.

Counsel for the appellants would argue that the appellants being biswedars are co-sharers of Pana Palan Mauja Jatauli. It is further argued that the plaintiffs and earlier their predecessors in interest are recorded to be in exclusive possession of land, detailed in para 2 of the judgment of trial court until the change qua possession was brought vide rapat/order Ex. D1 recorded at the back of appellants-plaintiffs. It is argued with vehemence that once the plaintiffs and their predecessors were recorded to be in possession of land in question both in the jamabandis and khasra girdawaris, no correction/alteration in the revenue records could be made by the revenue authorities much less without giving notice of hearing to the persons affected. It is further argued that the courts have committed a grave error rather illegality by relying upon document Ex. D1 and entries of subsequent khasra girdawaris that ensued order Ex. D1.

Counsel representing the respondents has supported consistent findings recorded by the courts with the submission that in the earlier litigation filed in a representative capacity against the State of Haryana and Municipal Committee, Haily Mandi tehsil Pataudi, it was averred that biswedars of shamlat Pana Palan Mauja Jatauli are the owners in joint

possession of land, subject matter of said litigation, therefore, the courts have rightly relied upon the judgment Ex. D4 to negate plea of the plaintiffs in respect of their exclusive possession of land in question.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the earlier litigation was filed by the proprietors of aforesaid pana in representative capacity against official defendants therein claiming declaration with consequential relief of permanent injunction or in the alternative for possession. The said litigation culminated in ex parte judgment and decree dated 21.11.1992. Counsel for the respondents has failed to point out if in the earlier litigation initiated by proprietors of said pana, the issue in controversy was with regard to joint or exclusive possession of land that belonged to aforesaid pana. This apart, in the concluding para of the judgment Ex. D4, the court has held that the plaintiffs are directed to be owners in possession of suit land described in para 2 of the plaint. The courts without correctly appreciating the dispute involved in the present litigation and findings recorded in the judgment Ex. D4 proceeded to record a finding that the appellants are not in exclusive possession of land in question being proprietors/biswedars of the aforesaid pana. In this view of the matter, reliance upon judgment Ex. D4 to non-suit the plaintiffs-appellants is highly misplaced, thus, cannot form the basis to reject plea of the appellants in respect of their exclusive possession of suit land.

This brings the court to findings of the court by relying upon document Ex. D1 and entries in khasra girdawaris subsequent thereto.

Before advertng to this issue, it is appropriate to note that counsel for the respondents has not disputed that prior to recording rapat dated 8.11.1996 Ex. D1, the plaintiffs or their predecessors in interest were recorded to be in exclusive possession of land, as per details in para 2 of the judgment of trial court, in the jamabandis as well as khasra girdawaris. Counsel for the respondents is not in a position to controvert plea of the appellants that revenue authorities are not competent to make correction of entries in jamabandi as the same falls within the purview and domain of civil court under Section 45 of the Punjab Land Revenue Act. There is nothing on record suggestive of the fact that prior to making correction in respect of possession qua suit land on the basis of girdawari kharif 1996, notice was issued to the plaintiffs/appellants and as such the document Ex. D1 cannot be taken into consideration either to negate plea of the appellants or rebut correctness of entries in jamabandis to which a presumption of correctness is attached in law. The courts below without appreciating the aforesaid vital and material aspects proceeded in a wrongful manner to reject claim of the plaintiffs by relying upon document Ex. D1 and subsequent entries in khasra girdawaris. In this view of the matter, it can safely be held that documents produced by the respondents and relied upon by the courts to reject plea of the plaintiffs with regard to their exclusive possession of suit land are the result of misreading of evidence, failure to correctly appreciate the legal position in respect of document Ex. D1. As has been noticed hereinbefore, but for the sake of repetition, counsel for the respondents has not disputed that prior to recording rapat dated 8.11.1996, the plaintiffs were recorded to be in exclusive possession of the suit land. There cannot

be dispute about settled position in law that a co-owner in exclusive possession is entitle to protect his possession against forcible intervention by other co-sharers except in due course of law namely seeking partition of the joint land. The appellants -plaintiffs being in exclusive possession of suit land as proprietors of aforesaid pana are entitle to protect their possession against forcible intervention by the respondents-defendants or other co-sharers of the aforesaid pana.

In view of what has been discussed hereinbefore, the appeal is allowed. The judgments and decrees passed by the courts are set aside. The suit filed by the appellants-plaintiffs is decreed to the effect that the respondents-defendants and other co-owners of the pana aforesaid are restrained from interfering or dispossessing the plaintiffs from the suit property, detailed in para 1 of the plaint except in due course of law. The parties are left to bear their own costs.

(Rekha Mittal)
Judge

1.4.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No