

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

**RSA No.1980 of 2014 (O&M)
Date of Decision:11.02.2019**

Maharawal Khewaji Trust (Regd.), Faridkot through its officiating Chief Executive

...Appellant(s)

Versus

Baldev Dass Chela Ram Saran Dass Chela Bhagwan Dass, Mohitmum of Dera Sahi Samadhan, Faridkot

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Arun Jain, Senior Advocate with
Mr.Amit Jain, Advocate for the appellant.

Mr.Sanja Majithia, Senior Advocate with
Mr.Inderjeet Singh, Advocate for the respondent.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court, reversing the judgment of the learned trial Court.

The plaintiff filed a suit for possession with respect to land comprised in Khasra No.3411 measuring 6 kanal and 3 marla. It was claimed that originally the property belongs to his Highness Raja Colonel Sir Harinder Singh Brar Bans Bahadur, sovereign Ruler of former Faridkot State, which was annexed with Punjab by the British and ultimately instrument of accession with dominion of India was signed and a letter of covenant was executed. It is pleaded case that on integration of State of Faridkot, a list of private properties was prepared. It is claimed that

Samadhis (Tombs) were mentioned at Sr.No.4 of the list of properties and since the land in dispute is part of the Samadhis, therefore, as per Will executed by King of the area, the property vests with the Trust.

On the other hand, the suit is contested by the defendant-respondent, claiming that the property is not part of Samadhis, and, therefore, the defendant is owner in possession of the property as his predecessors-in-interest were occupancy tenants who later on became absolute owner in view of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

This Court has heard the learned senior counsel for the parties and with their able assistance gone through the judgments passed by the courts below and the record.

At the time of admission, following substantial questions of law were framed:-

- (i) *“Whether the appellate Court was justified in reversing the finding of the trial court that the defendant had not been shown to be an occupancy tenant on the date when the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act of 1952 came into force?”*
- (ii) *Whether the court below did not error in finding that the plaintiff must have filed suit against the State of Punjab as well for the only fact that the State was shown in the revenue records at some point of time as the owner when as a matter of fact, it was nobody's case that the State had any right in respect of this property?”*

The dispute, as noticed, is as to whether the property is comprised in Khasra No.3411 is Gair Mumkin Samadhis or not. It may be significant to note here that in the Will no description of the property has

been given except Samadhis. This is position in the instrument of accession. In oral evidence, Lal Singh has appeared as PW-5 on behalf of the plaintiff, who admits that there is a boundary wall around the land comprised in Samadhis and residence of the defendant is outside of the boundary wall. He further admits that the suit land is an agricultural land used as such.

The plaintiff claims that since the suit land is adjoining the land comprised in Khasra Nos.3411/1 and 3411/2, therefore, it is part of the Samadhis. The learned trial court had recorded finding on the basis of this assumption.

In the considered view of this Court, the land comprised in Khasra No.3411 could not be assumed to be part of the Samadhis particularly when this is not part of the same complex and is agricultural land which also has a residence of defendant. Much reliance was placed on the judgment passed by Additional Civil Judge (Senior Division) dated 28.2.2005 which declares the Trust to be owner of land under stable and Samadhis. However, the aforesaid declaration is also with respect to land comprised in Khasra Nos.3411/1 and 3412/2.

Still further, it has been proved on the file that Ex.P2 i.e. jamabandi for the year 1957-58 only records the land comprised in Khasra No.3411 as Gair Mumkin Samadhis, however, the aforesaid error was corrected by the revenue authorities themselves. In the ownership column, Khasra No.3411 is recorded to be under the ownership of PEPSU Government and Bhagwan Dass Chela Nand Ram "Udasi Sadh Muajaria Maroosi was recorded to be in possession. Further the evidence has come

on record to prove possession of Bhagwan Dass-predecessor-in-interest of the defendant-respondent, since 1942-43, as is clear from jamabandis Ex.D7, D8 and D9 for the years 1942-43, 1946-47 and 1950-51, respectively. Even thereafter continuously predecessors-in-interests of the defendant or the defendant are recorded in possession. Jamabandies up to the years 1999-2000 have been produced. Even before consolidation of holdings, the revenue record shows that the land is shown as 'Gajra Abbai' i.e. agricultural land and not Gair Mumkin Samadhis. After consolidation of first jamabandi is of the year 1957-58, where in the column of ownership PEPSU Government was entered and not in the name of Raja Sahib. There is only one jamabandi which records this land as Gair Mumkin Samadhis and the aforesaid jamabandi has already been corrected by the revenue authorities.

Learned senior counsel for the appellant has submitted that the correction could not be ordered without proper proceedings, because it was not correction of a clerical mistake. The argument does not have substance because once entire revenue record proves that the land is agricultural and not part of Samadhis, a wrong entry made by the revenue official was on account of a clerical/inadvertent error which has been corrected.

Learned senior counsel for the appellant has further tried to argue that the jamabandi before consolidation of holdings refers to pre consolidation number which has not been connected.

No doubt the argument is attractive on first blush, however, on deeper scrutiny, it is without any substance. Identification of the land was never in issue before the courts below. Old Khasra number, i.e. pre

consolidation number and new Khasra number i.e. post consolidation number were also not in dispute. The parties did not contest this litigation on this aspect of the case. Since there was no issue on this aspect of the matter, therefore the learned counsel is not correct in raising an argument on this aspect for the first time.

Learned senior counsel for the appellant has further submitted that entry in the revenue record was corrected after Bhagwan Dass had died in the year 1947 and, therefore, entry was not correct. It may be noted that the death of Bhagwan Dass would not make any difference particularly when the correction is to be carried out with respect to entry prior in point of time.

Learned senior counsel for the appellant has further submitted that the revenue official has admitted that the record is missing. In the considered view of this Court, such argument would not advance the case of the plaintiff. Still further the first appellate court re-appreciated the evidence and recorded a well reasoned judgment, while setting aside the judgment of the learned trial court, by giving cogent reasons.

So far as first question is concerned, it is apparent that predecessors of the defendant was recorded as occupancy tenant and, therefore, question No.1 is decided against the appellant.

As regards second question, it may be noted that the learned first appellate court has only made an observation that in the revenue record also Raja Sahib was not recorded as owner of the land in dispute. The learned first appellate court has not recorded any finding that it is the State who is owner of the property. Accordingly, question No.2 is also answered

against the appellant.

In view of the above, there is no ground to interfere. Hence, regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

11.02.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No