

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

RSA-4291-2014(O&M)

Date of decision:-28.5.2019

Gurcharan Singh Chani and another

...Appellants

Versus

Pritam Singh (since deceased) through his LRs and others

...Respondents

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

Present: Mr.K.S. Dhillon, Advocate
for the appellants.

Mr.S.K. Rana, Advocate for
Mr.Malkiat Mann, Advocate
for respondents No.1, 5 and 7.

Mr.Samrit Gill, Advocate for
Mr.Sandeep Arora, Advocate
for respondents No.8 and 9.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Subedar
Pritam Singh son of Sh.Didar Singh for himself and as general
attorney of his brother Sh.Rattan Singh, both residents of village

Ishwarwal, Tehsil and District Jalandhar had brought a suit against defendants S/Sh.Rajan Chopra, Mulkh Raj, Amarjit Singh Amol, Gurcharan Singh Chani, Nirmal Singh Aujla, Santokh Singh Aujla, Onkar Singh Aujla, Smt.Nirmal Kaur and Smt.Nasib Kaur for recovery of Rs.10 lacs on account of arrears of license fee (Rent) and damages for digging out areas and for compensation for levelling areas to make them fit for cultivation besides craving for grant of relief of permanent injunction restraining the defendants from taking out any earth from the areas mentioned in the head-note of the plaint and that of judgment by the trial Court for the purpose of brick laying and directing defendants No.1 to 4 from entering in the land in suit or disturbing peaceful possession of the plaintiffs and defendants No.5 to 9, in the alternative for issue of a mandatory injunction against defendants No.1 to 4 to go out of the area and not to re-enter the same and further in the alternative for possession of the land as owners and in such contingency for award of mesne profits/licence fee from the date of suit to the time of actual dispossession.

As per the version of the plaintiffs, the land in question is owned by the plaintiffs and defendants No.5 to 9; that latter are residing abroad; that they have executed power of attorney in favour of plaintiffs, but the same was not duly embossed, as such they are impleaded as proforma defendants; that defendant No.1 is running a Brick Kiln adjoining to the suit land; that defendant No.2 is the father

of defendant No.1 and defendants No.3 & 4 are alleging themselves as owners of Brick Kiln; that all four of them have been dealing with the plaintiffs; that an application under order 30 Rule 1 CPC calling upon defendants No.1 to 4 to give the particulars of the firm was moved; that plaintiff No.1 is managing the suit land and in due management of the same, he allowed defendant No.1 through his father to get the land for earth excavated for the purpose of brick laying; that the license deed was executed on 22.02.1989 and as per that 87 Kanal 11 Marlas of land was agreed to be given to defendants for excavation of the earth from 1989 to 1996; that every year two acre of land was to be excavated and for that Rs.20,000/-per acre were to be paid; that the earth was to be taken upto the depth of 6' and for the remaining areas, every year @ Rs.2000/per year per acre was to be paid, in that manner, each year Rs.40,000/- + Rs.18,000/- were to be paid by defendants No.1 & 2 to the plaintiffs; that the total occupation period was for seven years and total payment came to Rs.4,06,000/-; that it was also agreed that the defendants would return the land duly levelled and fit for cultivation; that on 07.01.1995, another piece of land measuring 4 acres was further given for the same purpose from 13.4.1996 to 13.3.2000 @ Rs.50,000/- per year per acre, on the same terms and conditions; that defendants No.1 to 4 encroached into another area measuring 4 acres fully detailed in the head note 'C' of the plaint. According to the

plaintiffs, they are entitled to compensation for this land at the same rate for which 4 acres of land was given; that the defendants were required to level the land and make it fit for cultivation; that they have dug the land deeper than 6' depth and have not levelled the land and have not made it fit for any use and it is like uneven pond; that levelling and bringing the land to be fit for cultivation requires and expenditure of Rs.4,00,000/-; that the plaintiffs have received only Rs.2,60,000/- only against receipts; that the plaintiffs being NRIs have also complained to the NR1 Cell established by the Government; that the license of the defendants has expired; that the land is lying unused, unsown and vacant and the defendants have no right in the suit land, therefore, the possession of the owners of the land, may be presumed.

On notice the defendants No.1 to 4 had appeared. Defendants No.1 and 2 had filed a joint written statement, whereas a separate joint written statement was filed by defendants No.3 and 4. In the joint written statement submitted by the former, they had raised several legal preliminary objections to wit that the suit was bad for mis-joinder and non-joinder of necessary parties; that no cause of action arose against defendants No.5 to 9, as such the suit was not maintainable; that the plaintiffs had no locus standi to file the present suit; that the plaintiff No.1 cannot be allowed to claim more than his share and the plaintiffs are not owners of the suit property

and suit for compensation is not properly valued for the purpose of jurisdiction and court fee. On merits, the answering defendants submitted that defendant No.1 was not running any Brick Kiln and the plaintiffs were aware about the persons, who were working/running the alleged brick kiln; that the plaintiffs and defendants No.5 to 9 were not owners of the land and defendant No.2 was not the partner of defendant No.1; that defendant No.1 was not authorized to enter into an agreement for excavation of the land and defendants No.1 to 4 had not encroached upon four acre land and the plaintiffs are not entitled to any compensation; that there are no pits in the suit land; that the licence to run the Brick Kiln was given to defendants No.3 & 4 by the answering defendant No.1; that the answering defendants are not aware of any deep digging of any land of the plaintiffs and defendants No.5 to 9; that the alleged agreement, does not bear the signatures of defendant No.1; that the plaintiffs have no claim against the answering defendants; that the defendants had been paying regularly for the earth under an oral agreement and finally paid the entire amount due in full and final settlement of the amount due, thereafter, the plaintiffs are dealing with defendants No.3 & 4 regarding the land given for digging on earth and space for brick kiln of defendants No.3 & 4; that the answering defendants had ceased to have any interest in the brick kiln or the land; that the plaintiffs and defendants No.5 to 9 have no right to take forcible

possession of the suit land, which is with defendants No.3 & 4 as licensees and they were authorised to keep the possession. In the end, such defendants prayed for dismissal of the suit.

In the joint written statement submitted by defendants No.3 and 4, they also took up several legal objections and on merits contending that the plaintiffs were fully aware about the constitution of the firm; that the answering defendants were running brick kiln; that the plaintiffs had been receiving theka/lease money from them. According to such defendants, initially the agreement was executed by defendant No.1 but later on, the answering defendants had been paying lease money to the plaintiffs, who had been accepting the same. According to such defendants, it was not licence deed, but was an agreement allowing the answering defendants to dig out the clay for moulding the bricks and the answering defendants were to pay Rs.20,000/- for digging out earth upto 6' and the answering defendants denied that they were to pay Rs.2,000/- acre per year for the remaining nine acre of land and alleged that they were to pay Rs.2,000/-, but only for the land for which the possession was given to the answering defendants from time to time; that the plaintiffs have never handed over the possession of 11 acres land at one time. According to the answering defendants, they had not agreed to level the land and to return the same after levelling and making it fit for cultivation. Regarding the land fully detailed in the head note 'C', the

answering defendants alleged that the plaintiffs had received the entire lease money upto 30.4.2000 of land measuring 32 K-10 Marla; that they had already received back their land and are in possession of the same; that the answering defendants have nothing to do with this land. Regarding Para 'C', defendants alleged that they never took the possession of this land and it was a false claim and there was no question of making payment of any licence fee or compensation of Rs.8,06,000/-. The answering defendants were excavating the land for the purpose of moulding bricks and there is no question of loss of Rs.4,00,000/- as per agreement also; that on 08.12.1997, the case was settled with the answering defendants by the plaintiffs and an amount of Rs.45,700/- which was paid to the plaintiffs on 20.02.1998, thereafter, the plaintiffs received Rs.22,000/- from 1.6.1998 to 31.5.1999 for which the receipt was executed by the plaintiffs; thereafter the plaintiffs again received Rs.22,000/- as lease money/theke money from the period 1.6.1999 to 31.5.2000. Refuting the remaining allegations, such defendants prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint.

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

1. Whether the defendants are licensee having a right to dig out the land to the extent of six feet depth under the agreement in question? OPP
2. Whether the plaintiffs are entitled to recover the amount of Rs. 10,00,000/ as licence fee and damages as detailed in the head note of the plaint? OPP
3. Whether the plaintiffs are entitled to seek injunction restraining defendants tor excavation of earth to the depth about six feet as per agreement? OPP
4. Whether the plaintiffs are entitled to seek mandatory injunction to regain the possession after expiry of license? OPP
5. Whether in alternative relief, the plaintiffs are entitled to contingency of profits from the date of filing of suit till the actual dispossession? OPP
6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
7. Whether the plaintiff has got no cause of action to file the present suit? OPD
8. Whether the suit is not maintainable in the present form? OPD
9. Whether the plaintiff has got no locus standi to file the present suit? OPD
10. Whether the plaintiffs are not owners of the suit property?
OPD

11. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

12. Whether the jurisdiction of Civil Court is barred? OPD

13. Relief

Earlier the trial Court had decreed the suit for recovery of Rs.10 lacs on 5.6.2007. The said judgment and decree were challenged by way of filing two appeals, one by Rajan Chopra and Mulkh Rajan and another by Amarjit Singh and Gurcharan Singh Chani. Learned Additional District Judge, Jalandhar vide judgment dated 13.11.2009 has set aside judgment and decree passed by the trial Court and case was remanded to the trial Court to decide it again after giving one effective opportunity to defendants No.1 and 2/appellants to cross-examine the plaintiff's witnesses and then by giving one effective opportunity to defendants No.1 and 2 to lead their evidence. The case was received in the trial Court by remand when in addition to PW Inderpal Singh already examined as PW1, the plaintiff Pritam Singh got his statement recorded as PW2, thereafter the evidence of the plaintiffs was closed.

Earlier Gurcharan Singh had stepped into the witness box as DW1 and evidence was closed. However, after remand of the case, defendant No.1 Rajan Chopra stepped into the witness-box as DW1.

However, to avoid confusion, the witness number given to Rajan Chopra was changed to DW2.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiffs and against contesting defendants No.3 and 4, issue No.4 against the plaintiffs and in favour of the defendants, issue No.5 against the plaintiffs and in favour of the defendants, issues No.6 to 11 against the defendants and in favour of the plaintiffs. Resultantly, vide judgment and decree dated 6.9.2010 the claim of the plaintiffs accepted partly and suit was decreed for recovery of Rs.8 lakhs payable by defendants Nos.3 and 4; their liability being joint and several. However, the suit of the plaintiffs regarding other relief of Rs.2 lakhs and also claim against defendants No.1 and 2 was dismissed.

Feeling aggrieved by the said judgment and decree, the defendants No.3 and 4 had filed an appeal before District Judge, Jalandhar, which was assigned to Additional District Judge, Jalandhar, who vide judgment and decree dated 27.11.2013 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 defendants No.3 and 4 have filed the present regular second appeal before this Court, notice of which was

issued and the respondents No.1, 5, 7 to 9 have appeared through counsel.

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

Learned trial Court in view of the legal and factual position has reached the inference that there was settlement in terms of which full and final payment against the agreement has already been made by defendants No.1 and 2 to plaintiffs so nothing is due against defendants No.1 and 2 to the plaintiffs qua the agreement.

As regards the second piece of land measuring 32 kanals 10 marlas, the trial Court has come to the conclusion that it was taken by defendants No.3 and 4 for use for brick kiln so they are responsible for payment against it and admission in that regard was there by defendants No.3 and 4. The trial Court has further observed that Gurcharan Singh Chani defendant No.4 has stepped into the witness box as DW1 furnishing his affidavit Ex.DW4/A wherein he admitted that he had taken land of the plaintiffs on contract for running a brick kiln and they were further authorised to dig land up to 6 feet depth; that even in his cross-examination he had indirectly admitted that besides land measuring 11 acres and small piece of land is with them for excavation of earth, though he stated that the land was measuring 6-7 kanals but then his admission in written statement remained intact; that the defendants had not proved on

record any document that they had made payment against those four acres of land, in that way an amount of Rs.8 lakhs remained due to be recovered by the plaintiffs from defendants No.3 and 4.

As regards third piece of land measuring 32 kanals 7 marlas, which according to case of the plaintiffs was illegally and forcibly encroached upon by the defendants, all the four defendants have stoutly denied so. The plaintiffs were unable to prove such allegations by bringing on record enough cogent and convincing evidence. The trial Court has observed that in view of the admission by plaintiffs' witness, the possession of land had already been given back and plaintiffs were in possession so relief of permanent injunction against excavation had become infructuous. Issue No.3 was decided against the plaintiffs and in favour of the defendants.

With regard to entitlement of the plaintiffs of mandatory injunction regarding which issue No.4 had been framed, for the similar reasons the relief of mandatory injunction to regain the possession has become infructuous.

Coming to issue No.5 "Whether in alternative relief, the plaintiffs are entitled to contingency of profits from the date of filing of suit till the actual dispossession? OPP, the trial Court has made observations that though onus of proving this issue was upon the plaintiffs but no evidence was brought on record that defendants are still in possession or excavating the earth. Furthermore, plaintiff

Pritam Singh had admitted that full payment has been made by defendant No.1 regarding piece of land measuring 11 acres and with regard to second piece of land measuring 32 kanals 10 marlas, the possession of which has also been taken by the plaintiffs, therefore plaintiffs are not entitled for contingency profits as claimed by them.

When the judgment and decree passed by the trial Court were challenged in the appeal, learned Additional District Judge, Jalandhar to whom the appeal had been marked had noticed that respondents/plaintiffs had not filed any appeal against judgment dated 6.9.2010 vide which their suit regarding relief of perpetual injunction, mandatory injunction and for possession of the property or for compensation for levelling the area to make them fit for cultivation and furthermore they had not filed any cross/appeal/objections. Therefore, learned Additional District Judge, Jalandhar confined the discussion mainly qua the relief claimed by appellants/defendants No.3 and 4. The relevant part of the reasoning given in para No.21 and 22, which for ready reference are reproduced as under:

21. The Trial Court decreed the suit of the respondents/plaintiffs partly for recovery of Rs.8 Lakhs from defendants no.3 and 4. Apart from the same, Trial Court also held that appellants/defendants were able to prove their receipts Ex.D1 to Ex.D5 and ExD1/A and Ex.D2/A which were

also admitted by the plaintiff to be in his handwriting and under his signatures, regarding receipt of payments as shown in those receipts vide agreement Ex.PX for excavation of land from 1989 to 1996 in 11 acres of land. The bone of contention between parties in this appeal is about the recovery of Rs.8 Lacs in receipt of 32 Kanals 10 marlas of land as mentioned in head note B of the plaint. Plaintiffs specifically pleaded in their plaint that on 7.1.1995, another piece of land measuring 4 acres was given from 13.4.1996 to 13.4.2000 @ Rs.50,000/- per year per acre. In reply to these pleadings, there is no denial by defendants no.1 and 2. The appellants, in their pleadings also pleaded that plaintiffs have received entire amount up to 30.4.2000 and plaintiffs have received back possession of the suit property which is in their possession and said defendants no.3 to 4 have nothing to do with the land. Admittedly, onus always remain on the plaintiff to prove his pleadings and to stand upon his own legs but once a fact is admitted in pleadings, the same requires no proof. Due to the said principal of Evidence Act, it was not necessary for the plaintiff to adduce evidence and to prove document regarding 32K 10 Marlas of land. They placed on file copy of the agreement dated 7.1.1995 as Mark B which document could well be taken into consideration in view of the

admission of the agreement by defendants no.3 and 4 in their pleadings. According to the said agreement, defendants have to pay Rs.2 Lacs for four acres of land and total amount for four years comes to Rs.8 Lacs in total. Defendants only proved receipts Ex.D1 to Ex.D5 which were admitted by Pritam Singh, respondent. When defendants admitted execution of the agreement and took a plea that they have made payment against this agreement then it was for them to prove that they have paid the entire amount but the defendants failed to prove on record any document showing any payment or any receipt in respect of the said land measuring 32 kanals 10 marlas taken by the defendants no.3 and 4 for use of their brick kiln. Therefore, defendants no.3 and 4 were responsible for payment against the said land. Defendants, in order to prove their version, examined Gurcharan Singh Channi, defendant no.4 who admitted that he had taken land of the plaintiff for excavation of earth on contract and they were authorised to dig the land up to 6 feet. He nowhere denied that land given in the head note (point B) was never taken by these defendants. In cross-examination, he admitted that besides the land measuring 11 acres, small piece of land was also with them for excavation of land, though he tried to reduce the said land from 32 Kanals 10 marlas to

6/7Kanal. It was rightly held by the Trial Court that defendants no.3 and 4 never tried to withdraw the said admission or amend the said pleadings. Thus, it is to be taken that land measuring 32 kanals 10 marlas remained with defendants no.3 and 4 for four years for excavation of earth @ Rs.2 Lacs, per year. Therefore, total amount comes to Rs.8 Lacs and plaintiffs were rightly found entitled to receive the said payment from the present appellants.

22. Adverting to the contentions advanced by the appellants same hardly make it to believe being against the pleadings that rate was not Rs.50,000/- per year per acre because appellants pleaded that plaintiff had received entire amount in respect of land measuring 32 kanals 10 marlas. If defendants were got receipts Ex.D1 to Ex.D5 for payment of some other land then there was no reason to make payment of any amount in respect of this land measuring 32K-10M of land without any receipt. The defendants/appellants failed to prove any such receipt.

The First Appellate Court has properly dealt with the submissions made by learned counsel for the appellants even before this Court that vide agreement Mark B only Rs.2 lakhs were paid for four years but there is no such stipulation in the agreement Mark B

that Rs.50,000/- per year were to be charged for four years.

The main ground of attack of learned counsel for the appellant has been that four acres of land was given for a period of four years for a sum of Rs.2 lakhs inasmuch the lease amount was Rs.50,000/- per acre for four years. The defendants had paid Rs.4,06,000/- for a period of seven years while taking the land on lease. The lease money was Rs.50,000/- per acre coming to Rs.2 lakhs but the Courts below wrongly took it to be Rs.50,000/- per year.

However, learned counsel for the respondents has controverted such contentions of learned counsel for the appellants contending the Courts below have considered all the facts while coming to the conclusion that the lease money was Rs.50,000/- per year per acre. These contentions were raised before First Appellate Court also and First Appellate Court rejected those contentions observing that plaintiffs have specifically pleaded in their plaint that on 7.1.1995 another piece of land measuring 4 acres was given from 13.4.1996 to 13.4.2000 @ Rs.50,000/- per year per acre, however, in reply to that defendants No.1 and 2 had not denied the same; that the defendants No.3 and 4, who were appellants before learned Additional District Judge, Jalandhar in their pleadings had pleaded that plaintiffs had received entire amount up to 30.4.2000 receiving back possession of the suit property and defendants No.3 and 4 had

nothing to do with the land. The First Appellate Court has observed that according to the agreement dated 7.1.1995 Mark B, which could be taken into consideration in view of the admission of the agreement by defendants No.3 and 4 in their pleadings; that according to such agreement, defendants had to pay Rs.2 lacs for four acres of land and total amount for four years comes to Rs.8 Lacs in total. Defendants only proved receipts Ex.D1 to Ex.D5 admitted by Pritam Singh, plaintiff and further when defendants admitted execution of the agreement and took a plea that they have made payment against this agreement then it was for them to prove that they have paid the entire amount but they failed to prove in evidence any document showing any payment or any receipt in respect of the said land measuring 32 kanals 10 marlas taken by the defendants no.3 and 4 for use of their brick kiln. Discussing the evidence adduced by the parties, the First Appellate Court has come to the inference that land measuring 32 kanals 10 marlas remained with defendants No.3 and 4 for four years for excavation of earth @ Rs.2 lakhs per year, in that way the total amount comes out to Rs.8 lakhs and the trial Court has rightly found the plaintiffs to receive the said payment from appellants before that Court i.e. defendants No.3 and 4.

I do not see any reason to upset such finding of the fact recorded by the Court, which can certainly be not said to be perverse, arbitrary or based upon wrong, erroneous interpretation of factual

position.

The concurrent findings on the issues so recorded 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.

Therefore, the present appeal stands dismissed.

28.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No