

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 29.8.2019

RSA No. 1575 of 2017 (O&M)

Lilaram and others

---Appellants

versus

Parkash and others

---Respondents

RSA No. 1656 of 2017 (O&M)

Banwari and others

---Appellants

versus

Parkash and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. J.S.Mehndiratta, Advocate
for the appellants in RSA- 1575 of 2017
Mr. Surender Lamba, Advocate
for the appellants in RSA- 1656 of 2017
Mr. V.P.Sangwan, Advocate,
for respondent No. 1

Rekha Mittal, J.

CM No. 3808-C of 2017 in RSA-1575 of 2017

Prayer in this application is for impleading legal representatives of Sawal @ Sawat- appellant No. 3 (since deceased).

In view of averments made in the application supported by an affidavit of Sanjay appellant and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para No. 3 of the application are allowed to be brought on record as legal representatives of Sawal @ Sawat (since deceased), for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

Main case

This order will dispose of RSA Nos. 1575 and 1656 of 2017 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 1575 of 2017.

The respondent-plaintiff filed a suit for permanent injunction restraining the defendants including the appellants from creating any obstruction in possession and use of land measuring 70 kanal 9 marlas comprising khasra Nos. 166/13, 14, 214/4/2/2/1 as per jamabandi for the year 1994-95 and 2004-05, situated in revenue estate of village Norangabas Rajputana, Tehsil Charkhi Dadri, District Bhiwani. It is alleged that the plaintiff and pro-forma defendants are owners in possession of suit land. The defendants are strong head persons and bent upon damaging plaintiff's bajra crop.

The defendants filed the written statement and raised preliminary objections qua maintainability; cause of action; limitation and joinder and misjoinder of parties. They denied that the plaintiff and proforma defendants are in possession of suit land. The plaintiffs had purchased South Western portion of khasra No. 214/4/2/2/1 while the seller was not in its possession. The plaintiff did not get entered mutation of purchased land according to registered sale deed and instead got entered mutation of only Western portion of aforesaid khasra number. The Western portion of aforesaid khasra number was in possession of Phularam, father of defendants No. 1, 6 to 8 and grand father of defendants No. 2 to 5 and 9. Phularam made this land cultivable and also got entered girdawari of 80 kanals of land which is on Western side of khasra No. 214/4/2/2/1. The plaintiff and proforma defendants, in collusion with revenue authorities got

entered this Western portion in their name but they have never been in possession of the same or cultivated it. Defendants are in possession of suit land for the past 50 years. Bajra crop had been cultivated by the defendants and now they have sown wheat, mustard and toria crop. Phularam got installed tubewell in the suit land in 1985 and also got an electricity connection in his name which is still in use. The defendants are residing in a pucca house constructed near the well. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The respondent-plaintiff filed replication and re-asserted his stand taken in the plaint and denied the preliminary objections.

The trial court framed issues, reproduced in para 4 of the judgment of said court. Parties were permitted to adduce evidence in support of their respective contentions, noticed in paras 5 to 8 of the judgment of trial court. The trial court answered issues No. 1 and 2, taken up together, against the plaintiff-respondent, on the basis whereof the suit was dismissed with costs. However, appeal preferred by the respondent-plaintiff against judgment and decree dated 6.7.2013 passed by the trial court was allowed by the Additional District Judge, Bhiwani and the Appellate Court decreed the suit with costs and defendants were restrained from interfering in peaceful possession of the plaintiff over the suit land.

Counsel for the appellants would argue that there is sufficient evidence on record that tubewell stands installed in a part of land comprising khasra No. 214/4/2/2/1 in the name of Phularam, predecessor-in-interest of the defendants and the same falsifies and belies contention of the respondent-plaintiff that plaintiff along with proforma defendants are in possession of khasra No. 214/4/2/2/1 measuring 61 kanals. It is further

argued that report prepared by the local commission in pursuance of order dated 13.5.2011 and testimony of Chhattar son of Shiv Lal DW5 prove the factum of existence of a tubewell in the disputed khasra number. It is not plea of the respondent-plaintiff that any tubewell was got installed by him or the proforma defendants in khasra number aforesaid. He would point out that though there is no documentary evidence on record with regard to date, month or year when the tubewell was installed in the disputed khasra number but Chhattar DW5 had stated that the said tubewell was installed in the year 1985.

Another submission made by counsel is that proceedings under Section 145 of the Criminal Procedure Code (in short "Cr.P.C.") in respect of khasra number aforesaid were initiated at the behest of Sultan proforma defendant No. 10 and the same culminated in order dated 29.11.2011 passed by SDM, Charkhi Dadri and the order is Ex. D-25. It is argued that had the respondent and proforma defendants been in possession of land comprising the disputed khasra number, there was no reason for Sultan to initiate proceedings under Section 145 Cr.P.C. It is further argued that ordinarily proceedings under Section 145 Cr.P.C. are initiated by a party out of possession of disputed property,.

Counsel representing the respondent-plaintiff, on the contrary has supported the judgment and decree passed by the Court in Appeal with the submissions that compromise dated 8.6.1982 Ex. P5 effected in previous litigation corroborated by revenue records that reflects the respondent and proforma defendants to be in possession of land measuring 61 kanal and 10 marlas of disputed khasra number has rightly been relied upon by the First Appellate Court to uphold plea of the respondent that he along with

proforma defendants is in possession of suit land and entitle to protect his possession against forcible intervention at the behest of defendants-appellants. It is further argued that appellants-defendants have failed to adduce clear much less cogent evidence to establish that tubewell in the name of Phularam was installed in the disputed khasra number or the same was installed after the previous litigation between the parties was decided on 10.6.1982 on the basis of compromise dated 8.6.1982. It is further argued that testimony of Chhattar DW5 cannot carry much weight as he has expressed his ignorance about compromise between the parties admittedly effected on 8.6.1982 coupled with that in the concluding lines of cross examination he had stated that since he is illiterate, he does not know if the document prepared was an affidavit or otherwise.

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

Indisputably, Sultan and Jagdish sons of Pala Ram filed suit for declaration that they be declared owners in possession of land comprising khasra No. 214/4/2/2/1 towards the South and defendants Phularam and others to be owners in possession of land of khasra No. 214/4/2/2 towards Northern side. The said suit i.e. Civil Suit No. 469 of 1981 was decided on 10.6.1982 and copy of the judgment is Ex. P2 and decree sheet is Ex. P6. The said judgment makes reference to the compromise on the basis whereof Sultan and Jagdish were declared to be owners in possession of land described in khasra No. 214/4/2/2/1 towards Southern side and defendants therein to be owners in possession of land of khasra No. 214/4/2/2/2 towards North.

Perusal of the compromise Ex. CX therein and marked as Ex.

P5 leaves no manner of doubt that parties to the suit admitted ownership and possession of contesting parties in respect of the aforesaid khasra numbers in regard whereof *Tatima* was prepared in the compromise deed Ex. CX. It was also admitted by the parties that they are in possession of land of respective khasra numbers at the spot. Admission made by Phularam, predecessor in interest of the appellants in the earlier proceedings in view of compromise Ex. CX therein is binding against the appellants-defendants. No such plea has been raised by the defendants that subsequent to compromise dated 8.6.1982, Phularam or his successors in interest recovered possession of the disputed khasra number from Sultan and Jagdish etc. It is also undisputed position of the case that after decision of the earlier litigation in June 1982, entries in the jamabandis and khasra girdawari in respect of disputed khasra number record the plaintiff and proforma defendants to be owners and in possession of aforesaid disputed khasra number. As per the settled position in law, presumption of correctness is attached to entries made in the jamabandi but the same is rebuttable one.

The question for consideration is whether report dated 10.6.2011 prepared by the local commission, testimony of Chhattar DW5 and proceedings under Section 145 Cr.P.C. at the behest of Sultan-proforma defendant are sufficient to rebut correctness of entries in jamabandis. The local commission prepared the report in respect of his visit to the spot on 10.6.2011. Perusal of order dated 13.5.2011 passed by the trial court with regard to appointment of local commission reveals that Tehsildar Dadri was appointed as local commission for adjudging whether khasra No. 214/14/2/2/1 exists or not. However, the local commission beyond the scope

of authority given to him, has made a report in respect of existence of a tubewell/kotha in khasra No. 214/4//2/2/1. In this view of the matter, the appellants cannot derive any advantage to their contention from the report prepared by the local commission to the aforesaid extent. This apart, nothing has been mentioned in the report of the local commission that tubewell/kotha was installed in the disputed khasra number subsequent to decision of earlier litigation between the parties in June 1982 or the tubewell was installed at the behest of Phularam, predecessor-in-interest of the appellant. Analyzed from any angle, the appellants cannot derive any advantage to their contention from the report of the local commission with regard to existence of a tubewell in the disputed khasra number.

Chhattar DW5 had stated that tubewell was installed in the year 1985. He had stated that he has land in the neighbourhood of disputed khasra number. He is not even aware of compromise between the parties in the earlier suit on the basis whereof claim of Sultan and Jagdish in respect of disputed khasra number was accepted. Chhattar DW5 is an illiterate witness who did not even know that document produced by him is an affidavit or otherwise. The appellants for the reasons best known had withheld the documents with regard to installation of a tubewell by Phularam. That being so, the appellants cannot seek any aid from testimony of Chhattar DW5 to prove that tubewell in the name of Phularam was installed in the disputed khasra number much less after the decision in June 1982.

So far as initiation of proceedings under Section 145 Cr.P.C. is concerned, the same were initiated during pendency of civil litigation, therefore, is of no consequence. Even otherwise, the concerned revenue

authority also refused to make any effective decision in those proceedings on account of pendency of litigation before the civil court. It may be true that ordinarily proceedings under Section 145 Cr.P.C. are initiated by the party who is not in possession of disputed land but the same cannot be considered in absolute terms much less to be used for rebutting presumption of correctness attached to entries in jamabandis. The appellants have failed to advance any convincing arguments that decree and judgment passed by the Court in Appeal suffer from an error much less perversity warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed with costs.

(Rekha Mittal)
Judge

29.8.2019

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

