

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

**RSA No.1811 of 2018 (O&M)
Date of decision: 12.07.2019**

Rohtash and others

.....Appellants

Versus

Lakhmi and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Virendra Rana, Advocate,
for the appellants.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 13.03.2018 passed by the Additional District Judge, Mewat, dismissing an appeal filed by plaintiffs-appellants (hereinafter referred to as 'the plaintiffs') against the judgment and decree dated 20.07.2017 passed by the Additional Civil Judge (Senior Division), Ferozepur Jhirka, whereby suit filed by them (plaintiffs) for declaration, has been dismissed.

Rohtash etc.-plaintiffs (appellants herein) filed the above said suit with the averments that they were coming in possession of the suit land, situated within the revenue estate of village Bichhore, Tehsil Punhana, District Mewat, as bhonedars to the extent of 1/4th share. Previously, predecessor of the plaintiffs and defendants and proforma defendants, namely Gurbaksh was in exclusive possession of the land in dispute as bhondedar. After his death, the suit land was inherited by Chhota and Dhundal in equal shares. They continued to be recorded as bhondedars in possession of the suit land in revenue record in equal shares in the

Jamabandi upto 1943-44. Later on, Chhota and Dhundal had also died and the suit land was inherited by Hussaina, Fateh Ram and Bhoop Singh sons of Chhote to the extent of $\frac{1}{2}$ share and Chhajan, Toti sons of Dhundal to the extent of $\frac{1}{2}$ share. After the death of Hussaina, Fateh Ram, Bhoop Singh, Chhajjan and Toti, suit land was inherited by the plaintiffs, defendants and proforma defendants. Meaning thereby, plaintiffs had become bhondedars to the extent of $\frac{1}{4}$ th share, defendants to the extent of $\frac{1}{2}$ share and proforma defendants to the extent of $\frac{1}{4}$ th share in the suit land. Possession of the plaintiffs over the suit land, to the extent of their share, was continuous and without any interruption. It was further stated that in the Jamabandi for the years 1950-51 to 2003-04, the revenue officials, in collusion with the defendants, had recorded the grandfather of defendants namely Dhundal as bhondedar in possession of the suit land. The revenue officials had no right to delete the name of Chhota, who was grandfather of the plaintiffs and proforma defendants. The said Chhota was recorded as co-bhondedar in possession of the suit land in the jamabandis for the year 1906-07 to 1943-44. As per plaintiffs, the aforesaid entries in the revenue record, whereby grandfather of defendants namely Dhundal was recorded as bhondedar of the entire suit land, were wrong, illegal, null and void and were liable to be corrected accordingly. Hence, the suit.

Upon notice, defendants filed written statement taking preliminary objections with regard to the locus standi, maintainability, cause of action and limitation. It was submitted that the defendants, through their ancestors were coming in cultivating possession of the suit land as bhondedars for the last more than 100 years and the plaintiffs and proforma defendants never remained in possession of the said land in any capacity.

All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for the relief of declaration as prayed for? OPP
2. Whether the plaintiffs are entitled for the decree of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
5. Whether the plaintiffs have concealed the true and material facts from the Court? OPD
6. Whether the suit is barred by limitation? OPD
7. Relief.

Trial Court, after going through the evidence on record, dismissed the suit. Appeal against the judgment also met the same fate.

Heard. Both the Courts have given current finding of fact that the plaintiffs and defendants are descendants of common ancestor namely Gurbaksh Gurbaksh had two sons namely Chhota and Dhundal. Plaintiffs and proforma defendant Nos.4 to 9 are descendants of Chhota. On the other hand, defendant Nos.1 to 3 are the descendants of Dhundal. Common ancestor of the parties to the suit namely Gurbaksh was recorded in cultivating possession of the suit land as bhondedar in Jamabandi for the year 1897-98 Ex.P22 and jamabandi for the year 1901-02 Ex.P21. After the death of Gurbaksh, Chhota and Dhundal inherited the bhondedar rights and their names were recorded in the column of possession as co-bhondedar in equal shares, which is evident from the copies of jamabandi for the year

the Jamabandi for the year 1928-28 Ex.P15 and name of Dhundal was recorded in possession as bhondedar of the suit land. It was further observed that entries with regard to the name of Dhundal and thereafter, his successors-in-interest were continuing since the year 1950-1951 till date. However, the plaintiffs have filed the present suit for declaration and correction of the Jamabandi Ex.P10 in the year 2012 by stating that they are in possession of the suit land and this entry has been wrongly recorded. It has been further observed that Chhota and Dhundal were recorded as co-bhondedars in some other land, situated in villages Dadwal and Balotpatti also. After the death of Chhota, mutation of inheritance in respect of the said land was entered and sanctioned in favour of the plaintiffs in the year 1958 vide Ex.PA. In the year 1958, the plaintiffs would have the knowledge of the above mutation and entries in the revenue record. However, the present suit has been filed in the year 2012 i.e. after a gap of almost 54 years. With these observations, the suit of the plaintiffs has been dismissed.

Learned counsel for the appellants has placed on record copy of the order dated 09.03.2016 Mark D (Annexure A-1) passed by the Assistant Collector, IInd Grade and order dated 08.08.2017 (Annexure A-2) passed by by the Collector, Punhana. A perusal of the order dated 09.03.2016 (Annexure A-1) shows that the plaintiffs are in possession of the suit land.

It has been observed by the Courts below that this document had not attained finality because defendant Nos.1 to 3 had preferred an appeal against the said order of correction of Khasra Girdawari Mark-D. However, as per order dated 08.08.2017 (Annexure A-2) passed by the Collector, Punhana, appeal against the said order has already been dismissed as

nobody had appeared before the Collector. But, plaintiff-appellants cannot take benefit of these two orders showing their possession, as it is the Civil Court, which has the jurisdiction to examine the evidence and return a finding of possession in respect of bhondedars.

Resultantly, after going through the impugned judgments, this Court is of the view that plaintiffs-appellants have failed to lead any cogent and convincing evidence to prove their case. In the absence of any substantial evidence, suit filed by the plaintiffs (appellants) has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

12.07.2019
ajp

(RITU BAHRI)
JUDGE

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