

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 83 of 2014 (O&M)

Date of decision : 11.9.2019

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Lakhmir Singh and others

.....Appellants

vs.

State of Punjab through its Secretary/
Secretary Revenue, Punjab Civil Secretariat,
Chandigarh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Abhishek Bajaj, Advocate for the appellants.

Mr. C.L. Pawar, Senior DAG, Punjab.

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H. S. Madaan, J.

CM 11724-C-2019

This application under Order 1 Rule 10 CPC has been filed by applicant Harnek Singh son of Hakam Singh and Bhag Singh deceased – through his legal heir/representative, namely, Malwinder Singh son of Harnek Singh, for being impleaded as respondents.

Arguments in this case have already been heard.

The applicants had neither approached the trial Court, nor Ist Appellate Court with similar prayer. Under the circumstances, no ground is found to be there to accept the application. The same is

dismissed.

Main case.

Briefly stated facts of the case are that plaintiffs – Lakhmir Singh, Mohinder Singh, Sewa Singh– sons of Late Jagir Singh, Jarnail Singh, Bahadur Singh – both sons of Late Amar Singh, all residents of village Nagari, Tehsil and District Mohali, had brought a suit against the defendants i.e. State of Punjab through its Secretary/Secretary Revenue Punjab, Punjab Civil Secretariat, Chandigarh, Collector Deputy Commissioner, District SAS Nagar, Mohali and Tehsildar, SAS Nagar, Mohali, seeking a declaration that they are owners in possession of land measuring 8 kanal 2 marla, situated at village Nagari, Tehsil and District Mohali, as per jamabandi for the year 2005-06, fully described in headnote of the plaint and the entries showing State of Punjab, in column No.4 of Jamabandi are illegal, null and void, besides craving for grant of permanent injunction, restraining the defendants from interfering in the peaceful possession of the plaintiff over the suit property in any manner and from allotting the same to any other person.

As per case of the plaintiffs, originally, Sh. Mehar Singh grandfather of the plaintiffs was owner in possession of the suit property, which was held to be surplus by Collector Agrarian under the Punjab Security of Land Tenures Act, but such land was never utilized and the possession was never transferred. During such proceedings S/Sh.Kartar Singh, Milkha Singh, Sada Singh, Hakam Singh, Rulda Singh and his brothers had alleged themselves to be

allottees of the suit property. But their plea in that regard was not accepted by various authorities and finally it was set at rest in Civil Suit filed by heirs of Kartar Singh and others, vide judgment and decree dated 7.4.2008, passed by Additional Civil Judge (Senior Division), Mohali. Sh. Mehar Singh had expired on 24.9.1971, when succession of Mehar Singh opened the matter regarding surplus land was to be decided afresh amongst his legal heirs i.e. sons Jagir Singh and Amar Singh. In the meanwhile, Punjab Land Reforms Act, 1972, which was published on 2.4.1973, was enacted and thereafter, the property could no longer be taken to be surplus. The Commissioner, Patiala Division, vide his order dated 18.4.1988, had observed so. Furthermore, in an earlier litigation bearing suit No. 125 dated 26.4.1978, titled as 'Jagir Singh etc. vs. Jeet Singh etc.' the matter was decided in favour of the predecessors of the plaintiffs vide judgment and decree dated 21.7.1978 by the Court of Sub Judge Ist Class, Kharar, in which they were held to be owners in possession of the suit property. According to the plaintiffs, if the pleas are not accepted, then they have become owners of the suit land by way of adverse possession, since they and prior to them, their predecessors have been in open and hostile possession of the suit property without any objection and notice to all. According to the plaintiffs, the defendants threatened to interfere in their possession over the suit land and to dispossess them there from and further to allot the land to some other person, as such, feeling aggrieved, the plaintiffs brought the suit in question. Notice of the suit was given to the defendants,

who put in appearance and the case was fixed for filing of the written statement.

However, since written statement was not filed, despite getting various adjournments, defence of the defendants was ordered to be struck off by the trial Court. The case was fixed for evidence of the plaintiffs, during the course of which Lakhmir Singh – plaintiff No.1 appeared as PW-1 and submitted his affidavit PW 1/A, repeating on oath case of the plaintiffs, as contained in the plaint. He proved in evidence copy of order dated 25.8.1968, passed by Collector, Kharar as Exhibit P-1, copy of judgment and decree dated 7.4.2008 passed by Additional Civil Judge, Senior Division, Kharar, as Exhibit P-2, order of the Commissioner, Patiala Division dated 18.4.1988 as Exhibit P-3, copy of judgment and decree passed by Judge Ist Class, Kharar, dated 21.7.1978 as Exhibit P-4 and Exhibit P-5, respectively.

The plaintiffs further examined Sh. Jaipal Singh as PW-2, who submitted his affidavit Exhibit PW-2/A, supporting the case of the plaintiffs on material aspects, deposing that he being a co-villager and Ex-Sarpanch of the village has seen the suit property and earlier predecessors of the plaintiffs and now the plaintiffs are in open and hostile possession of the property without any objection and he considered the plaintiffs to be owners in possession of the suit property for the last several years.

The plaintiffs tendered in evidence attested copy of order dated 21.6.1993 as Exhibit P-7, attested copy of order dated 6.8.1992 as Exhibit P-8, copy of Jamabandi Mark A. Thereafter, their evidence

was closed.

After hearing the arguments, the trial Court vide judgment and decree dated 31.1.2011, refused to grant decree for declaration to plaintiffs, however, granted relief of permanent injunction to them restraining the defendants from taking forcible and illegal possession of the suit property, except in due course of law.

The reasoning given by the trial Court for arrival at such conclusion is contained in para No.12 of the judgment, which is quite relevant and is reproduced for ready reference:-

“After hearing the rival contentions of both ld. Counsel for the parties and gone through the file, this court is of the opinion that the present suit has been filed by the plaintiffs for seeking declaration to the effect that the plaintiffs are owner in possession of the suit land and entries showing in the Jamabandis are null and void and further for permanent injunction for restraining the defendants from interfering in the peaceful possession of the plaintiffs over the suit property, therefore, it was upon the plaintiffs to prove that the plaintiffs have become the owners of the suit property, but the plaintiffs have failed to prove the same as Jamabandis produced on record by the plaintiffs categorically reflects that the plaintiffs are tenant over the suit property. Moreover, the plaintiffs have in the pleadings itself have stated that earlier the

predecessor of the plaintiffs have filed the suit against the property in suit and same suit was decreed in their favour, therefore, once the predecessor of the plaintiffs have already filed suit for the property in present suit, which was stated to be decreed in their favour, then there was no occasion for the plaintiffs to file the present suit seeking the same relief. Furthermore, it was upon the plaintiffs to prove that the plaintiffs have become the owners by way of adverse possession, but the plaintiffs have failed to prove the same as plaintiffs have not been able to prove that there possession over suit property is open and hostile and further the plaintiffs have failed to prove the time from when the plaintiffs are in-adverse possession of the suit property which is open and hostile. Furthermore, as per the Jamabandis, the, plaintiffs are stated to be Gairmumkin of the suit property, hence, the plaintiffs are stated to be the tenant over the suit property, therefore, the plaintiffs cannot be allowed to raise the objection on title of the landlord as section 116 of Indian Evidence Act clearly bars the same and if it all the plaintiffs i.e. tenants want to challenge the ownership of the landlord/defendants, then plaintiffs were supposed to vacate the property in question and then to

challenge the ownership of the defendants. Furthermore, the plaintiffs not specified the date and time regarding the knowledge about the wrong entries made in the Jamabandis. Hence, it is not cleared by the plaintiffs from which date, the plaintiffs have come to know about the wrong entries. Therefore, the suit itself is hit by limitation. Furthermore, the plaintiffs have not challenged the alleged mutation vide which the plaintiffs are stated to be the Gairmumkin. Furthermore, the plaintiffs have examined PW2 who in his cross-examination has stated that the property in dispute is owned by the defendants only, therefore, this witness produced by the plaintiffs has admitted the ownership of the defendants. Furthermore, the plaintiffs who himself entered into witness box during his cross-examination has stated that he has not filed any appeal against the order dated 25.06.1968 passed by the Collector Agrarian Kharar and this witness further in his cross- examination has admitted the ownership of the defendants. Hence, the plaintiffs failed to prove their case. But as for as relief for permanent injunction is concerned, the plaintiffs have produced on record the Jamabandi for the year 2005-06 which clearly shows that the plaintiffs are in possession of the suit property. Moreover, the

plaintiffs have not led any evidence to prove that the plaintiffs are not in possession of the suit property, moreover, the plaintiffs are stated to be the tenant over the suit property. Hence, the plaintiffs have been to prove the possession over the suit property. Accordingly, once the plaintiffs have been able to prove possession over the suit property, hence the defendants are restrained from taking forcible and illegal possession of the suit property from the plaintiffs except in due course of law.”

Feeling aggrieved, the plaintiffs had approached the learned District Judge, SAS Nagar, Mohali, by way of filing an appeal, which was assigned to Additional District Judge, SAS Nagar, Mohali. Learned Additional District Judge, who vide judgment and decree dated 24.8.2013, affirmed the judgment and decree passed by the trial Court and dismissed the appeal.

Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court, by way of filing the regular second appeal, notice of which was given to the defendants-respondents, who have appeared through State counsel.

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

Even as per own case of the plaintiffs, the suit property earlier belonging to grandfather of the plaintiffs, namely, Sh. Mehar Singh, was held to be surplus, by Collector Agrarian, under the Punjab Security of Land Tenures Act and the same was allotted to

the tenants. Somehow, or the other way, they could not come in actual possession of the suit land. Does it mean that it was to revert to the original land owner. The answer is certainly in negative. Sh. Mehar Singh died on 24.9.1971. according to the plaintiffs, on death of Mehar Singh, his succession had opened and the matter regarding surplus land was to be decided a fresh. However, in the meanwhile, in place of Punjab Security of Land Tenures Act, 1953 and the PEPSU Tenancy and Agriculture Lands Act, 1955, a new Act by the name The Punjab Land Reforms Act, 1972, had come into being. Resultantly, the suit property was no longer surplus with respect to the plaintiffs and the Commissioner Patiala Division vide his order Exhibit P-3 has observed so. Even if this contention of the plaintiffs is taken at its face value, the order passed by the Commissioner, is mainly with regard to finding faults with the functioning of the Collector in handling the case, in as much as, zimini order dated 27.1.1987 was signed by him and then scored off. Several more defects in his functioning have been noticed. The end result was that the case was remanded to the Collector with a direction to give decision after seeking permission of the competent authority to review order dated 27.1.1987. therefore, this judgment cannot be of much help to the plaintiffs.

There is nothing on record to show that after the case was remanded, the Collector found that the suit land was no longer surplus and should revert back to the plaintiffs. The plaintiffs are relying upon the judgment and decree passed in Suit No. 125 dated

26.4.1978 titled as 'Jagir Singh etc. vs. Jeet Singh etc.', which according to them had been decided in favour of their predecessors. If the suit had already been decided in favour of the predecessors of the plaintiffs, then where was the necessity of filing the present suit.

Secondly, in the earlier litigation, the present defendants were not a party. Therefore, any decision in favour of the plaintiffs with regard to the suit land without impleading Government of Punjab, the recorded owner of the land, as a party, does not have much value. The findings given in that judgment and decree may be relevant as between the parties to the suit, but do not effect rights or title of the persons, who were not a party to the suit. The present defendants were certainly not there, as such the judgment and decree Exhibits P-4 and P-5, do not help the plaintiffs much, in claiming title as against the present defendants. It may be mentioned here that the trial Judge has not been able to properly interpret the entries in the jamabandi, as regard the nature of possession of the plaintiffs. The possession of the plaintiffs has been found to be as that of the tenants and there being relationship of landlord and tenant between the parties. It is not case of the plaintiffs that they are tenants under the defendants or are paying rent to the defendants. There is no such entry in column of jamabandi relating to payment of rent. The defendant – State is shown to be owner of the suit land. The nature of possession of the defendants is clearly unauthorized. Under the circumstances they could not claim any injunction against the true owner. However the trial Court has granted relief of permanent

injunction to the defendants and the Ist Appellate Court has not considered that aspect properly, resultantly did not interfere with grant of such relief. It needs to be mentioned here that the suit was not properly contested by the defendants in the trial Court. The written statement was not filed within the stipulated period, as such defence of the defendants was struck off. The defendants should have been vigilant enough to file the written statement within time and then pursue the matter properly. There could be every possibility of the officials of defendants conniving with the plaintiffs in doing so, to enable the plaintiffs to get benefit by default. The Secretary Revenue Punjab is directed to conduct a probe in the matter so as to fix the responsibility of the official(s) at fault and then to take suitable action. The connivance is further proved from the fact that the order striking off the defence of the defendants is not shown to have been challenged in the Court by way of filing a revision petition or otherwise.

Mutation No. 1415 dated 28.5.1986, is being challenged by way of filing suit on 31.1.2011, i.e. after more than 24 years. The suit is hopelessly time barred, since the declaration in that regard could have been obtained within three years thereof and not thereafter. The plaintiffs then took alternative plea of having become owners by way of adverse possession. But essential ingredients of adverse possession that they have been in open, continuous and hostile possession of the suit land, have been found to be missing by the Courts below and no disagreement with the Courts below in that regard can be made.

The jurisdiction of the Civil Court in such like matters is clearly barred in view of Section 25 of the Punjab Securities of Land Tenure Act, 1953, which for ready reference is being reproduced as under :-

“Exclusion of Courts and authorities:- Except in accordance with the provisions of this Act, the validity of any proceedings or order, taken or made under this Act, shall not be called in question in any Court or before any other authority.”

Even if surplus area is taken to be not utilized, its re-determination and determination of permissible area for the land owner is to be dealt with by the Collector Agrarian. The jurisdiction of the Civil Court is barred under Section 25 of the Punjab Securities of Land Tenure Act, 1953, as well as Section 21 of the Punjab Land Reforms Act, 1972. The State of Punjab is shown to be owner of the suit land. The plaintiffs are challenging that entry without explaining as to how it is wrong and erroneous and on what basis they are claiming title to the suit land.

Learned counsel for the appellants has referred to judgments *M/s Ruby Anand and others vs. State of Haryana and others 2018 (1) RCR (Civil) 721*, *M/s Rathore Promoters and Developers Pvt. Ltd. and another vs. State of Haryana and others 2017 (4) RCR (Civil) 995* and *Harbans Singh vs. Harnek Singh and others 2019 (1) RCR (Civil) 265*, in support of his contention that the Civil Court

has got jurisdiction. However, the authorities are distinguishable. Judgment in *M/s Ruby Anand's case (Supra)*, is not applicable since that relates to correction of entry in the revenue record, whereas the dispute in the present case is entirely different. For similar reasons, judgment in *M/s Rathore Promoters and Developers Pvt. Ltd.'s case (Supra)* and *Harbans Singh's case (Supra)*, are not applicable.

Various other judgments i.e. *Sardara Singh and others vs. the Financial Commissioner and others 2008 (2) RCR (Civil) 744*, *Smt. Pamela Devi Opal and others vs. State of Punjab and others 2008 (3) RCR (Civil) 949*, *Ujjagar Singh (dead) by LRs vs. the Collector, Bhatinda 1996 (3) RCR (Civil) 446*, *Dhan Kaur and others vs. State of Punjab and others 1984 RRR 121* and *Avtar Singh and others vs. Punjab State through the Secretary, Revenue, Punjab and others 2015 (3) RCR (Civil) 376*, referred to by counsel for the appellants, are not applicable due to different facts and circumstances.

No reason is there to accept the present appeal.

No substantial question of law arises in the present appeal.

Accordingly, finding no merit in the appeal, the same stands dismissed.

A copy of this order be sent to the respondents through the State counsel, for taking suitable action in the matter in light of the observations made on page 11 of this order.

11.9.2019
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(H.S. Madaan)
Judge

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