

RSA No.4107 of 2018 (O&M)

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

RSA No.4107 of 2018 (O&M)
Date of decision: 19.12.2019

Mani Ram and others

.....Appellants

versus

Inder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. A.P. Bhandari, Advocate, for the appellants.

RAMENDRA JAIN, J. (ORAL)

Through this appeal the plaintiffs have assailed judgment and decree of the Lower Appellate Court dated 28.2.2018, dismissing their suit while setting aside judgment and decree dated 12.10.2015 of the Trial Court in their favour.

Briefly, appellants-plaintiff filed suit a for permanent injunction against the respondents for restraining them from dispossessing the appellants from the suit property except in due course of law, claiming themselves to be in permissive possession of the suit land as '*gair marusi*' since the time of their forefathers. The Trial Court, after holding trial decreed the suit vide judgment and decree dated 12.10.2015, thereby restraining the respondents from evicting the appellants from the suit land illegally or forcibly, except in due course of law.

Being aggrieved, respondents approached the lower Appellate Court, who after hearing both the sides accepted their appeal, while setting aside

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judgment and decree of the Trial Court in favour of the appellants vide judgment and decree dated 28.2.2018.

Learned counsel for the appellants *inter alia* contends that the lower Appellate Court has illegally set aside well-reasoned judgment and decree of the Trial Court, wherein it was specifically held that from the revenue entries long possession of the appellants over the suit land was proved on record beyond any shadow of doubt. The lower Appellate Court did not appreciate revenue entries qua possession of the suit land in favour of the appellants in a right perspective. Showing copy of *jamabandi* for the year 2009-10, he further contends that entry regarding '*batai tehai*' shown in the said *jamabandi*, which is continuing since 1959-60, proves tenancy of the appellants through their forefathers over the suit land. Even otherwise, the appellants could not have been evicted from the suit land except in due course of law.

Having given thoughtful consideration to the above submissions, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

It is needless to mention here that tenancy is always a bilateral agreement. Appellants claimed themselves to be "*gair marusi*" tenants over the suit land. However, they have no documents such like lease/rent agreement or any rent receipt showing their possession over the suit land executed by respondents-landlord in their favour to prove their permissive possession over the suit land. Hence, above plea of tenancy of the appellants has rightly been rejected by the lower appellate Court.

Appellants have claimed their possession over suit land through their father, who admittedly died long ago around 30 years back from the date of filing of the suit. However, revenue entries continued in his favour showing

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his possession, which fact in itself proves that the revenue entries in favour of a dead person from any angle were stray entries. Therefore, the appellants cannot be permitted to take any help of those stray revenue entries.

For brevity findings of the lower Appellate Court recorded in para nos. 19 & 20 are reproduced hereunder:-

“19. It is admitted fact that defendants are owners of the suit property. It is also not in dispute that entries of Khasra Girdawari of suit land are in favour of plaintiffs. In Jamabandi of the suit land, father of the plaintiffs has been shown in possession of the suit land as Gair Marusi.

It is settled proposition of law that tenancy is bilateral contract and mere entry of 'Gair Marusi' is not sufficient to prove tenancy. Payment of rent is a necessary ingredient to determine the relationship of landlord and tenant. Non payment of rent negates existence of relationship of landlord and tenant. In this case, the column of payment of rent has been left blank in Jamabandi in respect of the suit land comprised in Rect. No. 90, Khasra No. 24 and 25/1. However, in column of rent of Jamabandi regarding suit land comprised in Rect. No. 103/7, a rent of 1/3rd being helper and expenses of fertilizers is recorded. It is apparent from the Jamabandi produced by the plaintiffs and other Jamabandi produced by the defendants that the name of Harphool father of he plaintiffs is mentioned in the column of possession as Gair Marusi. It is admitted case of the plaintiff that their father has already died about 30 years. It means that entries in the name of Harphool are continue even after 30 years of his death. Entries in the name of a dead person in the column of possession can not be respected because of the fact, it is proved to be wrong and therefore, plaintiffs can not take benefit of presumption of truth attached to the entries of revenue record because from their own case its correctness has been rebutted.

20. Further plaintiffs have asserted their possession as Gair Marusi. They have not explained whether their father had legally entered into possession of suit land. They have also failed to explain as to how and on what basis the entries were recorded in favour of their father. PW-1 Jagdev is aged about 33 years and PW-2 Ram Chand is aged about 35 years. They have deposed that earlier father of the plaintiffs was in possession of the suit property and after his death plaintiffs are in possession of the suit property. Whereas it is admitted fact that father of the plaintiffs has already died about 30 years ago. It means that PW-1 and PW-2 were 4-5 year old when father of the plaintiffs died. So, how they can say that earlier father of the plaintiffs was in possession. Further plaintiffs have alleged that their father was in possession of suit land as Gair Marusi i.e., tenant at will, but they have not disclosed the rate of rent and date of inception of tenancy. Plaintiffs have produced no evidence to show that they have been paying any rent to the defendants. Entry of Gair Marusi in favour of their father does not in any manner cloths them with any legal right to be in possession. In these circumstances, this Court is of the considered opinion that plaintiffs are not entitled for a relief of injunction. I find support on this point from the authority held in case titled as Harniv Sandhu Vs. Sandeep Singh Sandhu, 1998 (30 Civil Court Cases 676, wherein it was clearly held that where a party seeking injunction fails to produce any legal documents or show valid reasons as to on what basis he took over the possession, he is not entitled to discretionary relief of injunction because the Courts do not protect the possession of a trespasser against the true owner.

In case titled Uttam Singh Vs. Des Raj 1990(8) Punjab Legal Report and Status 143 (P&H), it was held that the revenue entries in the name of a person which continues even after his death for a long period cannot be relied upon as the same are palpably wrong and have no evidentiary

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value whatsoever. Such entries cannot be legally reliable in favour of a person who submitted the same.

There is absolutely no doubt about the ration of law laid down in the judgments relied upon by the learned counsel for defendants-appellants but the same are not applicable to the present case having different facts.”

No question of law much less substantial has been raised in this appeal.

Hence, same is held not maintainable.

No other point has been raised or arises for consideration in this appeal.

Dismissed.

(Ramendra Jain)
Judge

December 19, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.