

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5248 of 2017 (O&M)

Date of Decision: February 21, 2019

Ramesh Kumar

...Appellant

Versus

Aman Jain

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Peeush Gagneja, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-defendant has not been successful in defending the appeal preferred by the respondent-plaintiff against the dismissal of the suit for injunction qua forcible interference and dispossession.

Plaintiff asserted that as per the revenue record, i.e., jamabandies and khasra girdawaries, had been in possession of the suit land measuring 417 kanals 19 marlas comprising of various rectangles numbers and khasra numbers by alleging that his status was that of a Gair Marusi Tenant Batai Ba Hissa Teeja.

Defendant No.2 was proceeded ex-parte, whereas defendant No.1 opposed the suit by stating that the plaintiff had concealed various facts. In fact, the suit property was the ownership of defendant No.1 and his son Adish. The entries in the khasra girdawaries were changed fraudulently at the back of the defendants, which was beyond the jurisdiction of the Assistant Collector, though, the appeal filed, has been dismissed.

Since the parties were at variance, the trial court framed the following issues:-

- “1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for in the plaint? OPP*
- 2. Whether the plaintiff has any locus standi and cause of action for filing the present suit? OPP*
- 3. Whether the present suit is not maintainable in the present form? OPD*
- 4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
- 5. Whether the present suit is bad for non joinder and mis joinder of the parties? OPD*
- 6. Whether the plaintiff has filed the present suit against dead person i.e. defendant No.2? OPD*
- 7. Whether the plaintiff has concealed the true and material facts from the court, if so its effect? OPD*
- 8. Relief.”*

Plaintiff, in support of the pleadings, examined three witnesses and also brought on record documents Ex.P1 to Ex.P9, i.e., jamabandies, khasra girdawaries and the order of the Deputy Commissioner.

On the other hand, defendant No.1 himself appeared in the witness box as DW-1 and brought on record Rapat Roznamcha mark D1 and photocopy of khasra girdawari mark D2.

The trial Court, by noticing the documentary evidence, non-suited the plaintiff by holding that no explanation had come forth as to how he had been in possession of the suit land owned by defendant No.1 and dismissed the suit.

Mr. Peeush Gagneja, learned counsel for the appellant-defendant submitted that no doubt the appeal preferred against the order of the Assistant Collector causing an entry in the khasra girdawari in favour of

the respondent-plaintiff was dismissed and defendants had an opportunity to avail the remedy as noticed by the Lower Appellate Court for filing a suit for declaration. In fact, the plaintiff was not a Gair Marusi as no proof of batai or payment of rent has been led or brought on record.

I am afraid, the aforementioned argument is not sustainable, particularly when the appellant-defendant failed in appeal before the revenue authorities. The remedy, as noticed by the Lower Appellate Court, has not been availed as yet. If the status of the plaintiff is of a Gair Marusi and corrected in the revenue record, the defendants have also remedy to seek ejectment under the Punjab Security of Land Tenure Act, 1953 in view of the law laid down in the judgment rendered in **Shyam Lal Versus Deepa Dass Chela Ram Chela Garib Dass, 2016(7) SCC 572.**

For the reasons mentioned above, I do not find any illegality or perversity in the findings rendered by the Lower Appellate Court, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 21, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No