

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.820 of 2017 (O&M)

Date of Decision: March 06, 2019

Banwari

...Appellant

Versus

Hanuman & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Balbir Singh Jaswal, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal, at the instance of appellant-defendant No.1, is against the concurrent findings of fact, whereby the suit of the respondent-plaintiff for declaration, has been decreed.

Plaintiff sought declaration that he had been in cultivating possession of land measuring 24 kanals 0 marlas comprised in Khasra No.284//1(8-0), 10(8-0) and 11(8-0), situated at Village Nadhori, Tehsil and District Fatehabad as co-sharer and the girdawari entries in the name of defendants are wrong and illegal with consequential relief of possession in case not to be found in possession and also for setting-aside the orders of the Assistant Collector and the Collector.

Defendants opposed the suit and raised the objection qua maintainability and alleged that they are owners in possession by way of adverse possession since 1970.

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

“1) Whether orders passed by Assistant Collector IInd Grade, Bhuna, Collector, Fatehabad and Commissioner, Hisar Division, Hisar dated 23.06.2010, 30.08.2010 and 21.12.2010 for correction of Khasra Girdawari are wrong, illegal, baseless, null & void on the grounds mentioned in the plaint and plaintiff is entitled to declaration that he is in cultivating possession of 24 kanals 0 marla land situated in village Nadhori? OPP

2) Whether the Khasra-Girdawari entries going on in favour of defendants are illegal, wrong, baseless and liable to be corrected in favour of plaintiff as prayed for? OPP

3) Alternatively if the possession of plaintiff is not proved on the suit land then whether the plaintiff is entitled to possession of the suit land on the basis of title? OPP

4) Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD

5) Whether the suit is time barred? OPD

6) Whether the suit is not maintainable in its present form? OPD

7) Whether the suit is liable to be dismissed on account of non-availing of remedy as alleged in preliminary objection no.6 of the written statement? OPD

8) Whether the suit is collusive between the plaintiff and defendants no.3 to 6? OPD

9) Whether the suit is liable to be dismissed on the grounds of mis-joinder of other co-sharers as party to the suit? OPD

10) Whether the father of the plaintiff, who was cousin of defendant no.1 & Bhagi father of defendants no.2 to 6, Dhanni, four aunts (Bua) Chawli, Sheela, Brahama Devi and Maina Devi who were members of the same family effected an exchange of land qua their land situated in village Nadhori, Sinthala, Hasanga wherein father of defendant no.1, 2

to 6 was given land in village Nadhori towards Dholu side which was ownership of Bhagi and Banwari whereas Fakir Chand, father of plaintiff, Dhanni and four sisters of plaintiff was given land of village Jandli Khurd and possession of defendant no.1 and his brother Bhagi is continuous without any interruption to the knowledge of owners over land Khasra No.284//1, 10, 11 and now they have become owners of it and thereafter defendant no.1 has sold 5 acres of land (including 2 acres of land which he has obtained from Bhagi, his brother) situated in village Nadhori vide sale deed dated 08.02.2005 and similarly Bhagi, who obtained 2 acres of land from defendant no.1 in Hasanga transferred total 4 acres of land including 2 acres his own ownership in favour of Atma Ram, grandson, if so to what effect? OPD

11) Relief.”

Plaintiff, in support of the pleadings, examined three witnesses and also brought on record following documents:-

- Ex.P1 : Copy of jamabandi for the year 1965-1966
- Ex.P2 : Copy of jamabandi for the year 1970-71
- Ex.P3 : Copy of jamabandi for the year 2005-06
- Ex.P4 : Copy of jamabandi for the year 2010-2011.
- Ex.P5 : Copy of order dated 19.03.2010 passed by
ACIInd Grade, Bhuna.
- Ex.P6 : Copy of order dated 23.06.2010 passed by
ACIInd Grade, Bhuna.
- Ex.P7 : Copy of order dated 16.11.2010 passed by
Commissioner, Hisar Division, Hisar.
- Mark-A : Copy of order dated 30.08.2010 passed by
Collector, Fatehabad.

On the other hand, the defendants examined eight witnesses and tendered into evidence, the following documents:-

- Ex.D1 : Copy of rapat no.67
- Ex.D2 : Copy of khasra girdawari

- Ex.D3 : Copy of order dated 24.7.2013 passed in civil suit
titled as Subhash Vs Banwari
- Ex.D4 : Copy of order dated 5.8.2013 passed in civil suit
titled as Subhash Vs Banwari
- Ex.D5 : Copy of jamabandi for the year 1970-71
- Ex.D6 : Copy of jamabandi for the year 1975-76
- Ex.D7 : Copy of jamabandi for the year 1980-81
- Ex.D8 : Copy7 of jamabandi for the year 1985-86
- Ex.D9 : Copy of jamabandi for the year 1990-91
- Ex.D10 : Copy of jamabandi for the year 1995-96
- Ex.D11 : Copy of jamabandi for the year 2000-01
- Ex.D12 : Copy of Khasra Girdawari
- Ex.DW8/B : Copy of Rapat no.67
- Mark D1 to : Receipts
D37
- Mark D42 : Copy of driving licence of Ram Kumar
- Mark D43 : Copy of plaint of civil suit titled as Subhash Vs.
Banwari
- Mark D44 : Copy of written statement filed in case titled as
Subhash Vs Banwari.

Mr. Balbir Singh Jaswal, learned counsel for the appellant-defendant No.1 submitted that as per the provisions of Section 158 of the Punjab Land Revenue Act, the order of the Collector could not be assailed in the civil court as the remedy was to approach the Financial Commissioner. Plea of adverse possession was alternative. In fact, there was exchange of land between the parties. Plaintiff and the defendants were put into possession of khasra numbers and mutation was also effected.

I am afraid, the aforementioned argument is not sustainable as through a specific query, Mr. Jaswal disclosed that the revenue record did not reflect the maintaining of exchange, i.e., land given to the plaintiff by the defendants also reflected in possession of the defendants. In these

circumstances, the plaintiff sought declaration and alternative relief of possession of the land, which is in unauthorised occupation of the defendants. Plea of adverse possession tantamounts to accepting the title. The preliminary relief in the suit was for declaration and possession with ancillary relief of setting-aside of order of Collector which was only confined to the khasra girdawaries, which do not confer any title. Jurisdiction of the civil court cannot be taken away in such circumstances. Even otherwise, the revenue court cannot order for possession.

Findings of fact and law, thus, cannot be said to be suffering from any illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

March 06, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No