IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1221 of 1989 (O&M)
DATE OF DECISION:11.05.2020

Dharamvir and others

…..Appellants

versus

Prithi Singh and others

.....Respondents

2. RSA No.1225 of 1989 (O&M)

Dharambir and others

…..Appellants

versus

Pirthi and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Rohit Rana, Advocate for
Mr. Kunal Dawar, Advocate for appellant No.1 to 4

None for the respondents

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ALKA SARIN, J.

This judgement shall dispose of RSA. Nos.1221 of 1989 and 1225 of 1989. The appeals are being taken up and decided together as the facts involved are similar and over-lapping. Both appeals arise out of suits for declaration with consequential relief of permanent injunction. While RSA. No.1221 of 1989 is by the defendants (Dharamvir, etc.) against whom the Courts below have decided by decreeing the suit of the plaintiffs (Prithi Singh, etc.), RSA. No.1225 of 1989 is by the plaintiffs (Dharambir, etc.) against whom the Courts below have decided by dismissing their suit filed against the defendants (Pirthi, etc.). Thus, both appeals have common contesting parties and a common suit land.

On 19.9.1984 Dharambir, etc. filed a suit [CS. No.478] for declaration with a consequential relief of permanent injunction against Prithi, etc. alleging that they were in possession of the suit land since the time of their forefathers and were also co-sharers in the shallot Patti and that Prithi, etc. had no concern with the suit land. The suit was contested by Prithi, etc. who filed written statement averring inter-alia that Dharambir, etc., in collusion with the Patwari, had got their names entered in the Khasra Girdawris qua the suit land though they had no concern with the suit land.

On 3.10.1984 Prithi, etc. filed a suit [CS. No.528] for declaration with a consequential relief of permanent injunction against Dharambir, etc. alleging that they were owners in possession of the suit land since the time of their forefathers and that Dharambir, etc., in collusion with the Patwari, had got their names entered in the Khasra Girdawris qua the suit land and on the basis of these wrong entries were forcibly trying to dispossess Prithi, etc. and that the said revenue entries be declared null and void.

The suit was contested by Dharambir, etc. who filed written statement denying the ownership of Prithi, etc. over the suit land and contending that Dharambir, etc. were in fact in possession of the suit land and that the revenue entries in favour of Prithi, etc. were wrong and forged.

Both the suits were tried separately. Vide judgement and decree dated 6.8.1986 the Trial Court decreed the suit of Prithi, etc. i.e. CS. No.528. Thereafter, vide judgement and decree dated 21.1.1988 the Trial Court dismissed the suit of Dharambir, etc. i.e. CS. No.478. Thus, two appeals were filed by Dharambir, etc. The lower Appellate Court vide a common judgement dated 3.2.1989 dismissed both the appeals which had been filed by Dharambir, etc. Hence, the present two regular second appeals preferred by Dharambir, etc.

Learned counsel appearing for Dharambir, etc. has taken me through the lower court record and contended that both the Courts below have erred in dismissing his suit and in decreeing the suit of Prithi, etc. According to him, in the Jamabandi for 1972-73 (Ex.C1 in appeal) the suit land was recorded in the ownership of shamlat deh and possession was of makbuza malkaan and in the Jamabandi for 1982-83 (Ex.P1 in CS. No.478 & Ex.P5 in CS. No.528) Dharambir, etc. were recorded in possession. He submitted that the entry regarding possession of Prithi, etc. in the

Jamabandi for 1977-78 (Ex.P1 in CS. No.528 & Ex.D3 in CS. No.478) was without any basis and that is why it was subsequently changed after spot inspection in favour of Dharambir, etc. vide Jamabandi for 1982-83 (Ex.P1 in CS. No.478). He also relied upon the Khasra Girdawaris for 1983-84 and 1984-85 (Ex.P2 & Ex.P3 in CS. No.478) where possession was of Dharambir, etc. According to the counsel, the possession of Dharambir, etc. was also fortified by the entry dated 9.11.1981 in the Rapat Roznamcha (Ex.P4/A in CS. No.478) whereafter the entry was made in the Khasra Girdawari (Ex.P5 in CS. No.478). He also referred to the oral testimonies of PW1 to PW4.

None has appeared on behalf of the respondents i.e. Prithi, etc.

The Courts below found that the possession of Prithi, etc. was duly recorded in the Khasra Girdawaris from Kharif 1973 to Kharif 1982 (Ex.P2 & Ex.P6 in CS. No.528) but suddenly thereafter the names of Dharambir, etc. were recorded. Even in the Jamabandi for 1977-78 (Ex.P1 in CS. No.528 & Ex.D3 in CS. No.478) and Jamabandi for 1982-83 (Ex.P5 in CS. No.528) Prithi, etc. were recorded in possession of the suit land till it was got illegally changed by Dharambir, etc. It was also found that the change in entry in the revenue records was illegal and contrary to law as no notice was ever served upon Prithi, etc. nor were they heard before carrying out the changes to their detriment.

I have heard learned counsel for the appellants i.e. Dharambir, etc. and gone through the lower court record with his assistance. The earliest revenue record qua the suit land available on the record is the Jamabandi for 1972-73 (Ex.C1 in appeal) wherein it is described as Gair Mumkin Jamuna. Thereafter, in the Jamabandi for 1977-78 (Ex.P1 in CS. No.528 & Ex.D3 in CS. No.478) is it described as Sailaab. These entries would mean that the suit land was subject to river action. Thereafter, in the Jamabandi for 1982-83 (Ex.P5 in CS. No.528) the suit land as been described as Nautor which means land which has been allowed to be brought under cultivation. The earliest entries qua possession over the suit land are in favour of Prithi, etc. as is clear from the Khasra Girdawaris from Kharif 1973 to Kharif 1982 (Ex.P2 & Ex.P6 in CS. No.528). The names of Dharambir, etc. start appearing after 9.11.1981 when the entry was made in the Rapat Roznamcha (Ex.P4/A in CS. No.478).

Both the Courts below have found that from the statements of Virender Singh and Dharamvir Singh (PW2 & PW4 in CS. No.478) it is clear that no notice was issued to Prithi, etc. before carrying out the changes qua possession of the suit land in the revenue record on 9.11.1981. As per revenue record, Prithi, etc. continued to be in possession prior to the change of Khasra Girdawari which change was apparently without notice to Prithi, etc. and as such was a nullity. The change of the entry regarding possession in the Khasra Girdawaris after 9.11.1981 was without any authority of law and Prithi, etc. would be presumed to be in cultivating possession as was depicted prior to such change. Any change by the revenue officials in revenue record without notice to the aggrieved party was squarely hit by the instructions issued by the Financial Commissioner in exercise of general power of superintendence and control over all the revenue officers and violation of such instructions would render the change made in the revenue record as a nullity. In the case reported as **Amal Kumar v. Bhupinder Singh [1976 PLJ 26]** it was held that unless a prior notice in writing is given to person or persons likely to be adversely affected, any change in the Khasra Girdawari is null and void and hence does not bind the persons likely to be affected. It was held therein as under:

> *"The Financial Commissioner has prescribed the mode for effecting changes in the existing Khasra Girdawaris. According to the instructions, it is the duty of the Patwari before making any change in the existing entry at the time of harvest inspection to notify in writing the person or persons likely to be adversely affected by such a change of the entries and retain on record proof of the notifications. Further, the changes so made should be attested by the Lambardar or the Panch of the village. Entries made in violation of the said instructions shall be treated null and void at the time of attestation of the Jamabandi or at an earlier stage. Under Section 11 of the Punjab Land Revenue Act, the Financial Commissioner has the general power of superintendence and control over all Revenue Officers and in that capacity, he has got a right to issue such instructions. These instructions have been issued to put a curb on*

> *the unrestricted powers of the Patwaris to manipulate the Khasra Girdawaris in the way they desired. It is the duty of the Patwari before changing the Khasra Girdawari and making an entry in favour of the tenant to inform the landowner so that he can come and contest the new entry, which is to be made by him, if he so desires."*

The same reasoning has been followed in ***Gurcharan Singh vs. Kehar Singh (deceased) rep. by LRs [(1996) 3 RCR (Civil) 673], Dalip Singh vs. Hoshiara [(1999) 4 RCR (Civil) 278], Parkasho Devi & Ors. vs. Tarsem Lal & Anr. [AIR 2003 P&H 245], Rajbir & Ors. vs. Teka (deceased) through LRs & Ors. [2016 SCC OnLine P&H 4184].*** In the absence of adherence to the instructions of the Financial Commissioner and issuance of notice to the aggrieved party, the change so recorded in the revenue record would bring the presumption of continuity of possession in favour of the person in whose favour earlier entries were in existence.

Thus, this Court finds no reason to deviate from the reasoning giving by the Courts below to non-suit the appellants i.e. Dharambir, etc. The revenue entries in favour of Dharambir, etc. are liable to be ignored and they have failed to prove their possession over the suit land. The Courts below have rightly dismissed the suit of Dharambir, etc. and decreed the suit of Prithi, etc.

No other point was urged or argued.

Resultantly, the findings recorded by the Courts below are affirmed. Finding no merit in both the appeals, the same are dismissed.

(ALKA SARIN)
JUDGE

11.05.2020
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NOTE:
Whether speaking/non-speaking: Speaking
Whether reportable: YES