

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

(1)

RSA 774 of 1992

Date of Decision: February 19, 2020

Mani Ram

...Appellant

Versus

Chunni Lal and others

... Respondents

(2)

RSA 775 of 1992

Mani Ram

... Appellant

Versus

Chunni Lal and another

...Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Gurmeet S. Saini, Advocate
for the appellant.

None for respondents No. 1 and 2.

Respondent No.3 died.

FATEH DEEP SINGH, J. (Oral)

As both above detailed appeals are by unsuccessful allottee then plaintiff Mani Ram, though filed against different sets of defendants but on account of connectivity of facts and common law point are being taken up and disposed off together by this common judgment. The facts are being taken from RSA

No. 774 of 1992. Plaintiff Mani Ram filed civil suits against the defendants (Chunni Lal, Dewan Chand and Ved Parkash respondents in RSA No. 774 of 1992) and (Tek Chand and Pirthi Ram respondents in RSA No. 775 of 1992) and in both these suits for permanent injunction Mani Ram has taken stand that the suit land comprising of agricultural property was previously owned by one Chunni Lal, who was a big land owner and, subsequently, the property in question was declared as surplus area of Chunni Lal and, thus, the Special Agrarian Collector Fazilika allotted the said land to Mani Ram and delivered the possession of the same to him. Threatened over the illegal acts of the defendants, Chunni Lal and others, the allottee filed a suit for permanent injunction seeking a decree restraining the defendants from illegally and forcibly dispossessing the plaintiff Mani Ram from the allotted land. Tek Chand and his brother Pirthi Ram filed a similar suit for permanent injunction against Mani Ram claiming that they were the tenants at will and were cultivating the land in question since crop of Rabi year 1984 on *Batai* basis and the land was previously owned by Krishan Kumar and others and on the basis of that they were never dispossessed by any other and were continuing in possession and sought the decree in question. The uniform stand of the other party in both the suits were that the suit property is in cultivating possession of Tek

Chand and Pirthi Ram and others as tenants since 1984 and which they were continuing and had shown crop thereon and it is alleged that Krishan Kumar owner has since died and his heirs have become owners of the same claiming that the proceedings before the competent Court regarding surplus area alleged to be of Chunni Lal was still being carried on and, therefore, question of delivery of possession to Mani Ram does not arise.

The learned trial Court in both the cases framed separate issues which are as follows and are to the same effect:-

1. Whether the plaintiffs are in possession of the suit land as allottees?OPP
2. Whether the plaintiff is entitled to the injunction prayed for? OPP.
3. Whether the suit is bad for non-joinder of necessary parties?OPP.
4. Relief.

It is worthwhile to refer here that upon decision of the suits during the appeal, the learned first appellate Court allowed additional evidence of the parties and, thereafter, each of the respective plaintiff examined themselves after the additional evidence was allowed.

In the civil suit out of which RSA No. 775 of 1992

has arisen plaintiff Pirthi Ram testified himself as PW1 and examined his son Chunni Lal as PW2. On the other hand, Mani Ram defendant appeared as DW1 to further his stand and proved on Rapat Roznamcha as Ex.DA to prove the delivery of the possession besides Rojnamcha Waqati as Ex.DB and Ex.DC.

Similarly, in the civil suit out of which RSA No. 774 of 1992 has arisen plaintiff Mani Ram examined himself as PW1 and examined Ami Chand, Sarpanch as PW2 and to rebut his case, defendant Chunni Lal appeared into the witness box as DW1 and also examined Birbal as DW2 and Pirthi Ram as DW3 and also proved Rapat Roznamcha Ex.PA by way of additional evidence and Roznamcha Waqati as Ex.PB and Ex.PC.

The Court of learned Additional Civil Judge, Senior Division, through separate judgments in each suit of even date dated 05.06.1991 decreed the suit of plaintiff Mani Ram whereas dismissed with costs the suit of Tek Chand and another. Each of the unsuccessful parties filed separate appeals and through separate judgments of even date dated 25.02.1992, the Court of learned Additional District Judge, Ferozepur allowed both the appeals. That is how, these two appeals have come about.

Heard Mr. Gurmeet S. Saini, Advocate for the appellants and perused the records.

Upon hearing the two appeals what crystallises is as to which of the parties is entitled to a decree of permanent injunction. No doubt as per the copy of the Jamabandi for the year 1988-89 Ex.D4, Khasra Girdawari for the year 1987-88 Ex.PE and Sauni 89 reveals that Mani Ram is shown to be the owner of the land. On the other hand, vide orders dated 28.03.1989 Ex.PC and dated 29.06.1989 Ex.PB, the Naib Tehsildar has ordered that Khasra Girdawaries be carried out in the names of Tek Chand and Prithvi, who are in cultivating possession of the suit land as tenants at will and their names in the records be not disturbed. More so, it is unanimously accepted by the counsel for the two cases that Naib Tehsildar in the proceedings regarding correction of Khasra Girdawaries has ignored the orders of the Court on the grounds that the same were obtained during the pendency of the proceedings and ought to have been adjudicated keeping in view the possession that existed at the time of filing of the suit. Another intricate feature that jamabandi for the year 1983-84 Ex.P1 shows that the entries indicate that Pirthi Ram and Tek Chand were in cultivating possession of the suit land on *Batai* though a note has been given beneath that suit land has been allotted to Mani Ram and what leads to the inference that as per the stand of the Mani Ram that he was delivered possession of the land on 23.06.1986 and as has been observed by the learned first

appellate Court that before 23.06.1986. Admittedly, Tek Chand and Pirthi Ram were in cultivating possession of the suit land as tenants at will. The Court in the impugned findings keeping in view that there was no evidence to show the eviction of the tenants from the suit property and legitimately such a delivery of possession without having resort to legal and legitimate means does not carry any weight. From this, it irrefutably leads to the only conclusion that on the alleged date of delivery of possession, i.e. 23.06.1986 Tek Chand and Pirthi Ram were in cultivating possession of the suit property. To the specific query of the Court by what means, the tenants were issued notice or warrants of possession qua them was issued by the concerned Collector the counsel could not satisfactorily account for the same. As per the procedure canvassed, it is after the land is declared surplus by the Agrarian Collector, the State becomes the owner of the property and, thereafter, the possession of the said property is delivered to the State after adopting due process of law as the tenants even if there on *Batai* basis having substantial interest in the land and cannot be forcibly evicted without adopting due process of law. There is nothing suggestive on the records that objections were invited by the Collector from any of the occupants of the suit land. The Court in the impugned order has laid special emphasis on the cross-examination of Kanoongo Sat Paul who in his

cross-examination accepts that he was not aware as to who was in cultivating possession of the suit land at the time of delivery of possession and he never consulted revenue record to find out the same. It is further in the cross-examination that this witness accepts that he did not issue any proclamation in the village over delivery of the possession to Mani Ram. None of the witnesses in whose presence the possession was handed over was examined in the evidence and to the similar effect the testimony of witness Birpal, Chowkidar of the village who denied having made a proclamation at the time of delivery of the possession of the suit property. What contradicts the stand of Mani Ram is the order of Deputy Collector Canal dated 30.05.1989, wherein, it is observed that since Tek Chand and Pirthi Ram were in cultivating possession of the land and, therefore, there cannot be change in the *Warabandi* as even the learned District Judge Ferozepur has granted stay orders to Tek Chand and Pirthi Ram. The most distressing feature that has come during the arguments of the two cases even Malkiat Singh Naib Tehsildar in his order dated 19.06.1989 states that when he went to the disputed land, he saw men and women of Tek Chand and Pirthi Ram working in the land where wheat and cotton crops have been shown. Thus, from this all regardless the changes in the revenue records as to possession having been delivered are more illegalities at the back of the persons

who were in legitimate cultivating possession of the suit land. Furthermore, the cross-examination of Bur Singh Patwari and Sat Paul Kanungo leaves nothing to doubt that they did not visit the place for the delivery of the possession of the suit land on account of apprehension that the occupants might resist the same. Moreover, undisplaced an appeal against the orders of Special Collector Agarian before the Commissioner Ferozepur was pending is another distressing feature for the case of Mani Ram to claim that he was in legal, legitimate and cultivating possession of the suit land. The learned first appellate Court has rightly allowed the appeal. Nothing illegal or perverse could be pointed out in these findings by the counsel for the appellants. The appeals being hopelessly without any merits are hereby dismissed.

February 19, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

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