

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

RSA No.80 of 1996(O&M)

Date of decision: 13.1.2020

Piara Singh and others

.....Appellants

VERSUS

Amar Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Kewal Krishan, Advocate for the appellants.

Mr. P.P.S. Duggal, Advocate for respondent No.1.

REKHA MITTAL, J.

CM No.14082-C of 2011

Counsel for the applicant-appellant would state that the application may be dismissed as not pressed.

Disposed of accordingly.

RSA No.80 of 1996

Challenge in the present appeal has been directed against judgment and decree dated 03.11.1995 passed by the Additional District Judge, Amritsar whereby appeal against judgment and decree dated 29.09.1989 passed by the Sub Judge Ist Class, Patti (hereinafter referred to as 'trial Court') was allowed and suit filed by appellants/plaintiffs for permanent injunction was dismissed leaving the parties to bear their own costs.

The suit land measuring 20 kanal 8 marlas is comprised in khasra No.30//5/2/1/1, 5/1, 6/1/1, 30//7/2/1/1, 4, 7/2/3/1, situated in village

Kalsian Kalan, Tehsil Patti. The appellants have claimed themselves to be in possession of suit land, therefore, entitle to protect their possession against forcible interference by respondents/defendants, father and son respectively. It is pleaded that killa No.30//4 (8 kanals) was sold by Kanwar Bhagat Sher Singh to Piara Singh – plaintiff No.1 through registered sale deed dated 08.01.1986. The remaining land was in possession of Megh Singh son of Hakam Singh resident of village Kalsian Kalan. Megh Singh gave possession of that land to the plaintiffs through agreements dated 28.01.1986 and 29.01.1986 and received Rs.8000/- and Rs.2000/- respectively. Amar Singh – defendant No.1 in collusion with Megh Singh got changed khasra girdawaris in his name without notice and knowledge of the plaintiffs.

Defendants/respondents filed the written statement and raised preliminary objections inter alia that suit is not maintainable in the present form; suit is bad for non-joinder of necessary party i.e. Megh Singh son of Hakam Singh. They alleged that defendant No.1 is in possession of suit land and khasra girdawari has been corrected in his name. They have denied validity and correctness of sale deed dated 08.01.1986 and agreements dated 28.01.1986 and 29.01.1986 purported to be executed by Sh. Megh Singh. Megh Singh was not in possession of suit land so he could not deliver possession to the plaintiffs. Earlier Baghail Singh father of defendant No.1 was in possession of land in dispute and after his death defendant No.1 is in possession of that land and they have become owners being occupancy tenants. In the alternative, defendant No.1 claimed to have become owner by way of adverse possession as his possession over suit land is open, hostile, continuous for more than 12 years. Megh Singh

got effected khasra girdawaris in his name wrongly and the same was corrected in the name of defendant No.1 by Sh. S.S. Puri, Assistant Collector Ist Grade, Patti.

The trial Court framed following issues for determination:-

1. Whether the plaintiffs are owners in possession of the suit land and are entitled to injunction prayed for as alleged? OPP

Additional

Issue: Whether the defendant No.1 has become the owner of the suit land by adverse possession? OPD

2. Relief.

On appreciation of materials on record, in the light of rival submissions made by counsel for the parties, the trial Court held that plaintiff No.1 is owner of land bearing khasra No.30//4 (8 kanals) on the basis of sale deed dated 08.01.1986 and is in possession of the same. The claim of the plaintiffs on the basis of agreements dated 28.01.1986 and 29.01.1986 purported to be executed by Megh Singh for delivery of possession of land subject matter of those agreements, was rejected but they were otherwise held to be in possession of land comprising other khasra numbers and consequently their claim for grant of injunction restraining the respondents/defendants not to interfere in peaceful possession of suit land forcibly and except in due course of law was allowed. As has been noticed hereinbefore, the Appellate Court set aside the judgment and decree passed by the trial Court and suit of the plaintiffs was dismissed.

Counsel for the appellants would argue that the Appellate Court mis-interpreted order Ex.D10 and D12 to record a finding that khasra girdawari was corrected in the name of Amar Singh vide order dated 28.01.1987 passed by Sh. S.S. Puri, Collector, Patti. It is argued that as a matter of fact, vide order dated 28.01.1987, the Collector Patti only set aside order dated 30.09.1986 passed by Assistant Collector 2nd Grade, rejecting application of Amar Singh for correction of khasra girdawari wherein findings were recorded that on spot inspection and in view of statements of various persons during inquiry at the spot, it was found that Amar Singh was not found in possession of land comprising khasra No.30//4 and 7/2/3/1. It is further argued that though the Collector, Patti set aside the order dated 30.09.1986 but he neither remitted the case for decision of the application for correction of khasra girdawari afresh nor decided the said application by recording any finding that Amar Singh is in possession of land subject matter of the said application. It is further argued that the trial Court, on detailed consideration of materials on record, had rightly recorded its observations and conclusion that it were the appellants/plaintiffs who are in possession of suit land on the date of institution of the suit, thus, entitle to protect their possession except in due course of law. To support his submissions, he has also relied upon copies of jamabandis and khasra girdawaris marked as Ex.P5 to P8, P10, P12 to P14.

Counsel representing the respondents, on the contrary, has supported the judgment passed by the Appellate Court, reversing the judgment passed by the trial Court.

The appellants have claimed ownership qua land comprising khasra No.30//4 on the basis of sale deed Ex.P1 executed in favour of Piara Singh – plaintiff No.1 by Kanwar Bhagat Sher Singh, one of the co-owners through Sh. Joginder Singh, his attorney. None of the co-owners of the suit land is a party in the present litigation. There is nothing on record suggestive of the fact that Kanwar Bhagat Sher Singh or any other co-owner of khasra No.30//4 (8 kanals) ever challenged the sale deed dated 08.01.1986. The question for consideration is, whether Piara Singh got possession of the aforesaid land on the basis of sale deed Ex.P1. The trial Court has taken into consideration a recital in the sale deed with regard to delivery of possession to the vendee. The recital in the sale deed qua delivery of possession gets falsified and belied from the document dated 28.01.1986 relied upon by the appellants/plaintiffs. As per the said document mark-B, possession of land measuring 8 kanals comprising khasra No.30//4 was delivered by Sh. Megh Singh to Sh. Piara Singh on 28.01.1986. In this view of the matter, the appellants cannot derive any advantage to their contention in respect of their possession of land measuring 8 kanals of khasra No.30//4 on the basis of sale deed Ex.P1.

The trial Court refused to rely upon agreements dated 28.01.1986 and 29.01.1986 in respect of transfer of possession of land measuring 8 kanals by Megh Singh in favour of Piara Singh of Khasra No.30//4 (8-0) and by Megh Singh in favour of Bakshish Singh, Karnail Singh, Narinder Singh sons of Dalip Singh of land measuring 9 kanal 14 marlas comprising khasra No.30//7/2/3/1 (4-5), 6(1-0), 7/2/1/1 (0-9) and 5 (4-0) vide agreement dated 29.01.1986 mark-B. The trial Court also refused to rely upon the documents as these are not admissible for want of

registration. Findings recorded by the trial Court in respect of these agreements were not challenged by the appellants by way of cross appeal before the Appellate Court, therefore, same have attained finality. In this view of the matter, the appellants cannot derive any advantage to their contention in respect of their possession of land measuring 8 kanals of khasra No.30//4 either on the basis of sale deed Ex.P1 or agreement mark-B dated 28.01.1986.

The appellants filed an application for correction of khasra girdawari qua land measuring 12 kanal 5 marlas comprised in khasra No.30//7/2/3/1 (4-5) and 4 (8-0) in December 1987 during pendency of the suit. Amar Singh – defendant was impleaded as respondent in the said case. The application was allowed by A.C. 2nd Grade vide order dated 27.10.1988 Ex.P9. On the basis of this order, Rapat No.78 dated 09.11.1989 appears to have been entered and the said fact was reflected in khasra girdawari Ex.P12. As per the settled position in law, order passed by a Revenue Authority with regard to correction of khasra girdawari during pendency of civil suit involving the question of title or/and possession of land is of no legal consequence. The appellants, therefore, cannot derive any advantage to their contention from correction of khasra girdawari in respect of khasra No.30//4 and 7/2/3/1 or subsequent entries on the basis thereof, to prove their possession of land comprising aforesaid khasra numbers. In this view of the matter, I find myself unable to accept contention of the appellants that rejection of their claim in respect of entitlement to seek injunction in regard to possession of land of aforesaid khasra numbers suffers from an error much less perversity warranting intervention. However, as Piara Singh has become owner of 8 kanals of

land on the basis of sale deed Ex.P1, he would always be at liberty to recover possession of land of his ownership by taking recourse to appropriate legal proceedings.

This brings the Court to claim of the appellants regarding possession of land of khasra no.30//5/2/1/1, 5/1, 6/1/1 and 30//7/2/1/1. As per jamabandi for the year 1985-86, land comprising aforesaid khasra numbers except 5/1 is recorded to be in possession of Baghail Singh son of Phula Singh son of Jiwan Singh gair marusi awal through Megh Singh son of Hakam Singh gair marusi doim. A presumption of correctness is appended to entries in the jamabandi unless rebutted. In the khasra girdawari Ex.P7, the land of aforesaid khasra numbers which were earlier in the name of Baghail Singh through Megh Singh has been changed in the name of Bakshish Singh etc. but there is no evidence on record as to on what basis this change was made in the khasra girdawari for sauni 1986 and Haarhi 1987. The appellants have not produced any document i.e. a rapat recorded by the revenue authorities much less an order passed by a competent authority for correction of khasra girdawari in respect of the aforesaid khasra numbers, in their favour. Similarly, in respect of khasra No.30//5/1 the change in respect of possession from the names of Buta Singh son of Gulab Singh son of Gurditt Singh has been made in the name of Bakshish Singh etc. In the given circumstances, the appellants cannot derive any advantage to their contention regarding their possession of aforesaid khasra numbers on the basis of khasra girdawari Ex.P7 or subsequent entries. As per the settled position in law, a party who approaches the Court for getting relief has to stand on his own legs and cannot derive any advantage of weakness of defence. The appellants have

failed to lead cogent and convincing evidence to prove their possession of the suit land nor can they derive advantage to their contention from entries made in the revenue record, in view of discussion made hereinbefore.

To be fair to the appellants, counsel has made submissions that Appellate Court has wrongly interpreted order dated 28.01.1987. Counsel for the appellants may be right in his submission that though the Collector Patti set aside order dated 30.09.1986 passed by the Tehsildar-cum-Assistant Collector 2nd Grade Patti rejecting application of Amar Singh for correction of khasra girdawari but no such finding either in respect of possession of Amar Singh of land measuring 12 kanal 5 marlas comprised in khasra No.30//4 and 7/2/3/1 was recorded nor an order was made for correction of khasra girdawari in respect of the aforesaid khasra numbers in favour of Amar Singh. To this extent observations made by the Appellate Court are contrary to records and cannot be allowed to sustain. At the same time, in view of the aforesaid discussion, the appellants cannot be heard to say that their claim qua possession of suit land has wrongly been rejected by the Court in appeal.

In view of what has been discussed hereinbefore, finding no merit, the appeal stands disposed of in the aforesaid terms.

JANUARY 13, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no