

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3383 of 2007 (O&M)
Date of decision: 04.03.2020

Municipal Corporation, Gurgaon through its Joint Commissioner

... Appellant

versus

Rattan Lal & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ramesh Goyat, Advocate,
for the appellant.

Mr. Rohit Nagpal, Advocate
for the respondents.

**

ARUN MONGA, J.

1. Fight herein is for “2 Bigha Zameen”. Though the land in question is stated to have been acquired by the State, but who would get compensation depends now on title of land, which is the *lis* herein. For convenience, parties herein are being referred as per the original recital before the trial court.

2. Before this court the instant second appeal was originally filed by defendant/gram panchayat having suffered adverse concurrent findings by the trial court as well as the First Appellate court.

3. During the pendency of second appeal before this Court, the suit land located in village Nathupur was notified within the territorial limits of Municipal Corporation, Gurugram. Resultantly, the Municipal Corporation was impleaded as appellant No. 2 vide an order dated 18.05.2010.

4. Later, vide an order dated 12.05.2011, on the consent of the learned Counsel for appellant No. 1, gram panchayat was deleted as appellant no.1 and only Municipal Corporation survived as the sole appellant. It seems, however, that by sheer oversight, recital of parties in present appeal continued as “Gram Panchayat and another versus Rattan Lal and others”. The registry shall take appropriate steps to correct the same.

5. The plaintiffs filed suit seeking a decree of declaration to the effect that they are owners of the suit land in the respective shares as described more particularly in the head note of the suit. The claim was based on assertion that they have been in cultivating possession on the suit property since the time of their forefathers from the inception of the village. Provisions of Punjab Tenancy Act, 1887 read with Punjab Occupancy Tenants (Vesting of Proprietary Rights Act) 1953, also were relied upon to seek the decree of declaration on the basis of continued possession for more than 30 years. Upon notice, defendant not only filed written statement to resist the suit but also filed a counter claim to establish its rights on the suit land. Trial court vide judgment dated 08.08.2006 decreed the suit in favour of the plaintiffs. First Appellate Court upheld the judgment and decree passed by the trial Court vide its judgment dated 08.11.2006. Hence the second appeal by the defendant.

6. Succinct facts as pleaded are that the suit land was originally given to the predecessors of the plaintiff's by the owners with the oral agreement not to eject them from the suit land. The land was made cultivable by the plaintiffs by spending money. However, due to the negligence and mistake of revenue authorities, the name of plaintiffs was not entered as owners. Their name was recorded as ‘Gair Marusi’ tenants.

Whereas, Gram Panchayat of the village was recorded as the owner. Despite the fact that the plaintiffs/predecessors had been in occupation and cultivation of the suit land since 1966 i.e. more than 30 years yet their name was not recorded as owners, notwithstanding, several requests to the effect.

7. Plaintiffs had filed an earlier civil suit also bearing No. 490/21.08.1999 for permanent injunction against Gram Panchayat (predecessor-in-interest of Municipal Corporation). The same was decreed vide judgment dated 12.02.2000 (Ex P/1) passed by Civil Judge, Gurgaon against Gram Panchayat. Consequently, the defendant (Gram Panchayat) was restrained from dispossessing plaintiffs from or interfering with their possession over the suit land. However, plaintiffs name was still not recorded as owners in the revenue records despite decree in their favour in the said earlier civil suit.

8. In this background, another subsequent civil suit was filed sometime in January, 2003. It is this later suit which has resulted in present regular second appeal, wherein, plaintiffs' claim was for declaration that they are in possession as complete owners/ co-sharers. The suit was resisted and it was denied that the plaintiffs are in possession or cultivation of the suit land. Rather, the suit land was stated to be '*Shamlat deh*' reserved for '*gairmumkin nala*' at the time of consolidation. The suit land was thus stated to be in possession and ownership of the Gram Panchayat. The defendant stated that the suit land had in fact been acquired by the State Government and the plaintiffs wanted to grab the compensation amount under the disguise of the suit. A counter claim was filed by defendant Gram Panchayat seeking relief qua its rights.

9. From the rival pleadings read with the counter claim,

following issues were framed by the trial court:-

- “1. Whether the plaintiffs No.1 and 2 are in possession of half share, plaintiffs No.3 to 6 are in possession of 4th share and plaintiffs No.7 to 9 are in the possession of the 1/4th share of the suit property as detailed in a para No.1 of the plaint since the time of their forefathers?OPP(issue corrected as it was in advertence)*
- 2. Whether the Gram Panchayat has been wrongly recorded as the owner of the suit land in the Revenue Record despite that they never remained in possession on the suit property? OPP*
- 3. Whether the suit is not maintainable for want of any cause of action in favour of the plaintiffs and due to the concealment of material facts on his part? OPD*
- 4. Whether the civil court has no jurisdiction to entertain the present suit which otherwise is barred under Section 205 of Haryana Panchayati Raj Act? OPD*
- 5. Whether the suit is barred by limitation? OPD*
- 6. Whether the suit land is gair mumkin Nala reserved for consolidation proceedings for the outlet of rainy water and falls within the definition of shamlat deh? OPD*
- 7. Relief.”*

10. On appraisal of evidence adduced by parties and findings returned in favour of the plaintiffs, trial Court decided all the issues against defendant and thus decreed the suit in favour of plaintiffs.

11. First Appellate Court reaffirmed the findings rendered by trial Court resulting in dismissal of first appeal filed by defendant.

12. I have gone through the record and heard learned counsel for the parties.

13. Adverting to the factual findings first, the trial Court as well as the First Appellate Court based on the revenue records of the relevant years i.e. Jamabandi for the years 1970-71 to 2000-2001, Khasra girdawari of years 1976-81, 1996-2001-2003 held that it was proved on record by the plaintiffs that they along with their ancestors have been in continuous possession of the suit land for more than 30 years. They thus continued to be in possession and had constructed a house also on the suit land. Para 10 and 12 of the trial Court judgment which are relevant are reproduced herein below:-

“10. The Onus to prove this issue was upon the plaintiff. Witness appearing on behalf of plaintiff has deposed about plaintiffs' possession upon the suit property since the time of their forefathers. The plaintiffs have also filed the revenue documents in the form of jamabandi w.e.f. 1970-71 to 2001 i.e. Ex.P4 to Ex.P9 where plaintiffs are coming as the recorded possessors upon suit property through their ancestors as Gair moursi. Though in the owners column Gram Panchayat is recorded as the owner. Plaintiffs in addition have placed on record the khasra girdawari w.e.f. 1976-81 Ex.P-10 and w.e.f. 1996 till the year 2001 Ex.P11. The khasra Girdawari till the year 2003 as Ex.P-12 are placed on record. All reflecting the plaintiffs to be possessors upon the suit land as Gair marusi. These all revenue documents have a presumption of truth attached to them. The said presumption has nowhere been rebutted by the defendants. These documents are sufficient to hold that the plaintiffs are coming in possession upon the suit property to the extent of their respective shares since the four years prior 1970 as it is settled law with respect to the revenue record that every revenue entry is to be presumed as an entry four years prior the date of the documents for the reason that revenue documents are to be prepared after a gap of four years, only though this presumption is again rebuttable but it

is already observed above that there is no rebuttal produced by the defendants to all these documents. Though defendant has produced jamabandi for the year 1961-62 Ex.D-1 showing the Gram Panchayat as the owners as well as the possessors upon suit land and also showing the suit land to be an existing nala. But defendants' own document i.e. Ex.D-2 the jamabandi for the year 1995-96 has reflected plaintiffs to be the possessors upon suit land, Ex.D-2 document corroborating the plaintiff's evidence. In addition Ex.P-1 the judgment in an earlier suit filed by the present plaintiff against present defendant reflect that in that suit for permanent injunction plaintiff had prayed for restraint against the defendants. The suit was decreed in their favour. Hence it stands beyond doubt that plaintiffs are coming into possession upon suit land which earlier was banjar kadim later was converted into cultivable and finally a house was erected upon the suit land by the plaintiffs.

11. XXX

12. *From the above discussion it has already been proved that plaintiffs are coming in the possession from their land for a period of more than 30 years i.e. w.e.f.(at lest as per documents) 1966 till 2003. The documents are also sufficient to reflect that the rent has never been amount of the land revenue and that plaintiffs still are in possession as they have constructed the residential house upon the land and there had never been increase in the rent which was not more than land revenue. Accordingly by virtue of Punjab Occupancy of Tenant Vesting Propriety Act. Plaintiffs have automatically become the owners in possession to the extent of respective share. Hence issue stands decided in favour of the plaintiffs.”*

14. The above findings of the trial court have been reaffirmed by the First Appellate Court, inter alia, in para 12 and 13 of its judgment as below:-

“12. Now the case of the plaintiffs is also corroborated by documentary evidence as well as the statement of Mahipal who stepped into witness box as DW1. On the file copy of jamabandi Ex.P4 for the year 1970-71 has been produced, a perusal of this copy of Jamabandi reveals that Sunehari predecessor of plaintiffs have been shown to be in cultivating possession of the suit property as Gair Murusi. A perusal of column no.9 shows that Sunheri has been shown in possession of the suit property without payment of any lagan kabja notor which entry squarely supports the case of the plaintiffs that Sunheri was inducted as tenant without payment of rent on the ground that he made the suit land cultivable. To the same effect is the copy of Jamabandi Ex.P5 for the year 1975-76, Ex.P6 for the year 1985-86, Ex.P7 for the year 1990-91 and Ex.P8 for the year 1995-96, Ex.P9 for the year 2001-02. The copy of Khasra Girdawari Ex.P10 also shows the possession of Sunehari as Billa Lagan Kabja Notor and perusal of this khasra girdawari shows that the land was duly under cultivation. No doubt in the copy of Khasra Girdawari Ex.P11, the suit land has been shown to be Gair Mumkin Colony from Sawani 1996 to Haari 1999. However, further perusal of this khasra girdwari Ex.P1 shows that from Sawani 1999, the major part of the suit property i.e. 1-18 out of 2 biswas has been shown to be under cultivation and only in part of the land i.e. 2 biswansies, Makanat has been shown. So in the position of Khasra Girdwari Ex.P12 from Sawani 2001 to Sawani 2003. Thus, when major portion of the suit property is under cultivation, then it cannot be said that the suit land is not cultivable, as urged by learned counsel for the appellant.

(Emphasis supplied)

13. Further when Mahipal stepped into witness box on behalf of appellant Gram Panchayat as DW1, then he has categorically deposed that the suit land was being cultivated by the plaintiffs. He has admitted that at present also, the plaintiffs have cultivated the suit land. He has also admitted

that before the plaintiffs, their father and grand father used to cultivate the suit land. He has admitted that the plaintiffs are continuing in possession of the suit land for the last 50 years. Now this statement of Mahipal rebuts the entry in copy of Jamabandi Ex.D2 that suit land is Banjar Qadim. It also rebuts the entry in Ex.D1 for the year 1961-62 that suit property is non-cultivable being Gair Mumkin Nala. Thus, there is ample evidence on the file that plaintiffs have become owners of the suit land under the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights Act).”

15. Qua occupation of suit land, it is pertinent to note that plaintiffs' earlier civil suit for permanent injunction was decreed on 12.02.2000 against the defendant Gram Panchayat vide Ex P-1. It was held therein that plaintiffs were in possession of the suit land, though observing, that the defendant was at liberty to take its possession in accordance with the procedure established by law. The gram panchayat was fully aware of the earlier injunction suit proceedings but, it willingly chose not to contest the same. The said injunction decree has since attained finality, to the extent, that the plaintiffs were/are indisputably the occupants of the suit land.

16. Another aspect of the matter, deserving notice, is that trial Court vide its impugned judgment, not only disposed of the suit but also the counter-claim, in the following terms:

“ As a sequel of the findings of this Court on the issues mentioned above, the suit of the plaintiffs stands proved. Suit is hereby ordered to be decreed. Decree sheet be prepared. ”

Implicitly, by non grant of any relief to the defendant, its

counter-claim stood rejected/dismissed by the trial Court.

17. In first appeal before the learned Additional District Judge, the relief claimed by the defendants was as under:

“It is, therefore, prayed that the appeal may kindly be accepted and the suit of the plaintiffs be dismissed in the interest of justice.”

Following dismissal of the first appeal by the learned District Judge, the appellant filed the instant second appeal claiming relief as under:

“It is, therefore, respectfully prayed that this appeal may kindly be accepted with costs throughout and the impugned judgments and decree passed by the Court below may kindly be set aside in the interest of justice.”

As is obvious, the defendant did not challenge the dismissal of its counter claim by the trial Court or seek any relief qua the same either before first Appellate Court or in the instant second appeal.

18. In its counter-claim, the Gram Panchayat asserted that it is the actual owner in possession of the suit land. It had prayed for a declaration that entries in revenue record showing plaintiffs/ their predecessors-in-interest as *gair marusi* in the column of cultivation of the suit land are wrong and against facts. Defendant/ Gram Panchayat also prayed for setting aside the earlier judgment and decree dated 12.02.2000. Trial Court rejected/ declined the defendant's counter claim. As noted above, the defendant did not challenge the dismissal of its counter claim or seek any relief either before First Appellate Court or in the instant second appeal qua the dismissal of its counter claim by the trial Court. The

dismissal of defendant's counter claim by the trial Court has also thus attained finality.

19. Till the filing of counter claim (dated 18.09.2003) in the subsequent suit, the defendant did not take any steps for setting aside or to challenge in any higher court the earlier judgment and decree dated 12.02.2000 Ex.P/1. By the time subsequent suit was filed (in 2003) against the Gram Panchayat, the earlier judgment had attained finality. The judgment dated 12.02.2000 Ex P/1 holding the plaintiffs to be occupants of the suit land operates as *res judicata*, thereby precluding any fresh adjudication inter se the parties on the question of occupation/ possession.

20. Explanation V below Section 11 of the CPC provides that any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this Section, be deemed to have been refused. Order VIII Rule 6A of CPC provides that a counter claim shall have the same effect as a cross suit, so as to enable the Court to pronounce a judgment in the same suit, both on the original claim and on the counter claim. It also provides that the counter claim shall be treated as a plaint and be governed by the rules applicable to plaints.

21. The principle of *res judicata* is attracted in the instant case as counter claim of the defendant stood dismissed/ rejected and, the defendant did not, at any stage of the case, challenge the dismissal of its counter claim. Settled law is that *res judicata* is also applicable in between two stages of the same litigation. To that extent, a court, whether a trial court or a higher court, having at an earlier stage decided a matter in one way, will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Reliance may be had to

**U.P.State Road Transport Corporation v. State of Uttar Pradesh AIR
2005 SC 446.**

22. The finding of plaintiffs' occupation/ possession recorded in earlier judgment dated 12.02.2000 having attained finality at the time of filing of the later suit operated as *res judicata* against the defendant. Rejection of the defendant's counter claim and/ or earlier judgment dated 12.02.2000 was not challenged either in the first appeal or in the instant appeal. That once again confirms the bar of *res judicata* against the defendant on the point of occupation/ possession and, in that sense, can be termed as double *resjudicata*.

23. There is no perversity or illegality in appraisal of the evidence by either of the Courts below. PW-3 Jai Singh, a sitting Member of defendant Panchayat (aged 62 years in March, 2006) and PW2 Rohtas, Lambardar of village Nathupur deposed that since the age of discretion, they have been seeing the plaintiffs and before them, their ancestors in possession of and cultivating the suit land. PW1 Mange Ram, plaintiff deposed that the plaintiffs ancestors and after them, the plaintiffs have been in continuing possession of the suit land. Taking 5 years as the age of discretion, PW-3 Jai Singh may be credited with personal knowledge of the state of affairs and the possession of the plaintiffs/their ancestors since 1949. On the point of continued possession of the plaintiffs and before them of their ancestors, the testimony of PWs Jai Singh, Rohtas and Mange Ram could not be shaken in cross examination. The only witness examined by the defendant is DW1 Mahi Pal, who is the authorized representative of the defendant to defend the case. He admitted that for the preceding 50 years (from 06.06.2006), the suit land was/is in

continuing possession of and being cultivated by the plaintiffs and before them, by their ancestors and that since the age of discretion, he has been seeing the possession of the plaintiffs. His oral testimony, particularly as the defendant's own representative, thus supports the aforesaid unanimous version of the three witnesses examined on the continued possession of the plaintiffs and before them their ancestors.

24. Jamabandies from 1970-71 to 2000-01, (Ex P/4 for 1970-71, Ex P/ 5 for 1975-76, Ex P/6 for 1985-86, Ex P/7 for 1990-91, Ex P/8 (also Ex D/1) for 1995-96 and Ex P/9 for 2000-01)), khasra girdawari Ex P/10 (31.10.1976 to 30.03.1981), Ex P/11 (10/1996 to 07.03.2001) Ex P/12 (from 12.10.2001 to 20.10.2003) show the possession of plaintiffs/their predecessors over the suit land as *gair marusi*. Under Section 44 of the Punjab Land Revenue Act, an entry made in a record-of-rights in accordance with the law for the time being in force shall be presumed to be true, until the contrary is proved. The entries in *khasra girdwari* though not credited with any such presumption, yet constitute public record prepared by public officers in the course of their duties and have considerable evidentiary value.

25. The only piece of evidence showing the defendant's possession is *jamabandi* Ex D/1 (repeated number) for 1961-62, wherein the entry is '*maqbooza maalkan*' i.e. civil panchayat deh. Initial rebuttable presumption of its correctness seems to have been more than displaced by the overwhelming oral evidence led by the plaintiffs and the admissions of the defendant's own representative and its solitary witness DW Mahi Pal, Panch of the Gram Panchyat coupled with the aforesaid documentary evidence showing the possession of the plaintiffs and before them, of their

ancestors and finality of judgment dated 12.02.2000 showing the plaintiffs' possession.

26. In the totality of circumstances, to my mind, the plaintiffs' continuous occupation/ possession at least since 1949, if not earlier, stood established.

27. Now turning to the defendant's claim of ownership over the suit land. The plaintiffs' claim in suit, giving rise to the present regular second appeal was for declaration that they are in possession as complete owners/ co-sharers. There is nothing on record to show if since the start of plaintiffs' possession, at least from 1949, the defendant, by claiming ownership, ever took any steps or initiated legal proceedings, whatsoever, against the plaintiffs for recovery of possession of the suit land or for its rent. Absolutely, no explanation is forthcoming for this long and continuing inertia of the defendant to assert its ownership and/or to take any steps or initiate legal proceedings against the plaintiffs for recovery of its possession or for rent.

28. The defendant itself asserted in the written statement that the suit land has been acquired by the State Government and the plaintiffs want to grab the compensation under the disguise of this suit. I have perused judgment dated 16.09.2016 rendered by a Division Bench of this Court in CWP No. 1664 of 2008 (filed by the present plaintiffs) titled Rattan Lal & others vs. State of Punjab and others. The plaintiffs therein had challenged notifications dated 03.10.2006 and 01.10.2007 issued under sections 4 and 6 of the Land Acquisition Act, 1894 for acquisition of the suit land asserting their ownership and possession over the same. They (plaintiffs) had filed their objections under section 5A of the Act, *ibid*, and

three of them had also appeared for personal hearing in support of their claim. While upholding the acquisition of land, the Division Bench of this Court had directed that the authorities will reconsider the claim of the petitioners(the plaintiffs in present proceedings) for the release of their house. It is obvious the defendant Gram Panchayat or its successor-in-interest Municipal Corporation, Gurgaon did not ever lodge any claim, whatsoever, of its ownership or raise any objection, whatsoever, to the plaintiffs' claim of ownership of the suit land before the Land Acquisition authorities.

29. On behalf of the defendant/ appellant, it was submitted to the Court that the subject matter of the instant appeal was also the subject matter of writ petition No. 16664 of 2008 filed by the respondents which was then pending before this Court. Knowing this fully well, still the defendant/appellant did not take any steps for intervention/ impleadment in the said writ petition by asserting its claim of ownership of the subject land.

30. The established continuing long occupation of the plaintiffs at least since 1949, wholly unexplained long inaction/ failure of the defendant/appellant, in any manner, to assert its ownership before any Court/ authority; failure to challenge the rejection of its counter claim and pursue the same; mid-way relinquishment of counter claim; the finality attached to the dismissal of counter claim and defendant's failure even to seek intervention/ impleadment in CWP No. 1664 of 2008 (O&M) claiming ownership rights are obvious pointers that plaintiffs ownership was never disputed by defendant.

31. Cumulatively, in my opinion, the plaintiffs have thus been

legitimately exercising and asserting their ownership; the defendant had abandoned its claim, if any, and acquiesced in the plaintiffs' ownership of the suit land, irrespective of the rival contentions of the parties for and against the applicability of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

32. Even when tested on statutory yardstick of 1952 Act, both the Courts below after due appreciation of evidence rendered a conclusive finding that being an occupant, the plaintiffs were entitled to the benefit of the Act, *ibid*. It is noteworthy, though it may be at the cost of repetition, that defendant's own witness i.e. DW 1 Mahipal the Sarpanch of the village Panchayat himself categorically deposed that the suit land was being cultivated by the plaintiffs. He also deposed that the plaintiffs were in continued possession of the suit land for the last 50 years. It has also been proved on record by both the courts below that there is sufficient evidence to prove that the rent has never been more than or the amount of land revenue.

33. In this background, applying the statutory parameters also, the defendant having once acquiesced to the continued occupation of plaintiffs, its claim to ownership is hit by definition of "occupancy tenant" as contained in Section 2(f) of the 1952 Act. For ready reference, same is reproduced hereinbelow:-

"2. Definitions:-

(a) to (e) XXX

(f) "occupancy tenant" means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of

the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant”

A perusal of the above would show that occupancy tenant includes a tenant who obtains “right” of occupancy in respect of land “held by him” whether by agreement with the landlord or “otherwise”. Clearly in present case the Gram Panchayat throughout, by its conduct, more particularly enumerated in preceding paragraph 30-31 of instant judgment, and other reasons in preceding paragraphs had abandoned its rights over the suit land and by implicit consent for over 50 years, thus raising a safe assumption to be drawn in favour of plaintiffs as occupancy tenants, within the meaning of word “otherwise” per Section 2(f), *ibid*.

34. Apart from above, entries in the revenue record also reflect that suit land has been described as ‘KABJA NOTOR’ which means a previously barren land converted into cultivable. In support thereof reference may be had to Apex Court judgment titled as **Mihan Singh & Ors. Vs. Ravi Prasad & Ors., Civil Appeal No. 2751 of 1987, decided on 13.01.1993**. Relevant part thereof is extracted hereinbelow:-

“This appeal by the defendants is against the judgment of the Lower Appellate Court as upheld by the High Court. The Trial Court found the appellants in possession of the part of the land as tenants on the following reasoning:-

“The ownership of the disputed property of the plaintiffs is admitted. It is also an admitted fact that defendants are in possession of the suit land. Now it is to be decided whether the defendants are in possession of the suit property as tenants or their possession is unauthorised and they are mere-trespassers on the suit land. In the

column of cultivation in the revenue record copy of jamabandi 1979-80 and copy of khasra Girdwari Ex.D.8 in the crop kharif 1981 and Rabi 1982 and in the copies of Khasra Girdawari from Kharif 1978 to Kharif 1980 the defendants are shown in cultivating possession of the suit land as tenants. In the column of rent it is mentioned that no rent is paid due to reclamation of the suit land (Billa Lagan Baweja No-Tore). It is also clear from the evidence as well as from the pleadings on the file that any rent in cash or kind was never paid to the plaintiffs landowners. It is also admitted that the defendants into possession over the suit land in Kharif 1975. In the copy of Jamabandi 1974-75 Ex.D-7 plaintiffs are shown in possession of the suit land in the column of cultivation. It is mentioned that the possession is Malkana possession and the suit is mentioned as Banjar Qadeem except few Khasra numbers which I am going to discuss.....It is also clear from the revenue record that the land which was Banjar Qadeem before 1975 have been reclaimed and is under cultivation and irrigated. It is also clear from the evidence that the land which was in the possession of the owners before Kharif 1975 was Banjar Qadeem.....As per my observation above it is proved that the defendants have installed three tube wells over the suit land and have levelled the suit land and reclaimed it during their possession over the suit land after kharif 1975 and the amount of Rs.1650/- incurred by the defendants to level the suit land is also proved on the file.....After hearing arguments at length I am of the opinion although no rent was paid to the land owners regarding each crop but this fact cannot be denied that the defendants have spent a huge amount to reclaim the suit land and for installing three tubewells over it. In my opinion the amount was spent only with this understanding that the land owners will not receive any

rent from the defendants for some period and that period I cannot definitely hold as there is no such agreement between the parties in writing. It is clear from the conduct of the land owners also that they remained mum for such a long period from Kharif 1975 up to the date of filing of the suit. Certainly the main reason was that there was understanding between the parties that rent will not be paid if land is reclaimed by the defendants.”

The above quoted findings of the Trial Court were reversed by the Lower Appellate Court primarily on the ground that the appellants had not been paying rent/ batai or mesne profits to the respondents-plaintiffs for cultivating the land. The Trial Court, as quoted above, found as a fact on the basis of evidence on the record that the rent/ batai was not being paid because the appellants had converted the banjar-land into cultivatable by spending money and labour. Apart from that it was also found by the Trial Court that three tubewells were sunk on the land and further money was spent on levelling the same. The Lower Appellate Court reversed the findings of the Trial Court without taking into consideration the evidence on the record which was fully discussed by the Trial Court. We are of the view that the Lower Appellate Court misread the evidence on the record and acted in perverse manner in setting aside the well reasoned findings of the Trial Court based on cogent evidence.

2. We allow the appeal, set aside the judgment and decree of the Lower Appellate Court and of the High Court and restore the judgment and decree of the Trial Court.”

35. In the present case para 12 of impugned judgment of First Appellate Court may be noted which is as below:-

A perusal of column no.9 shows that Sunheri has been shown in possession of the suit property without payment of any lagan kabja notor which entry squarely supports the case of the

plaintiffs that Sunheri was inducted as tenant without payment of rent on the ground that he made the suit land cultivable. To the same effect is the copy of Jamabandi Ex.P5 for the year 1975-76, Ex.P6 for the year 1985-86, Ex.P7 for the year 1990-91 and Ex.P8 for the year 1995-96, Ex.P9 for the year 2001-02. The copy of Khasra Girdawari Ex.P10 also shows the possession of Sunehari as Billa Lagan Kabja Notor and perusal of this khasra girdawari shows that the land was duly under cultivation. (Emphasis supplied)

36. The suit land herein being “Billa Legan Kabja Notor” the principle enunciated in 'Mihan Singh' judgment, supra, is applicable to the present case.

37. Having perused the judgments of both the courts below vis a vis the record of the case, this court is of the view that there is no illegality or infirmity in the findings of facts returned therein. No interference by this Court is warranted to disturb the said well reasoned findings. I am of the opinion that the conclusions drawn by the learned trial Court and affirmed by the learned first Appellate Court are in consonance with the record and facts of the case. Neither is there any fresh ground worthy of indulgence in the appellate jurisdiction of this Court is made out.

38. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by Courts below are upheld.

39. Pending applications stand disposed of.

40. No order as to costs.

(ARUN MONGA)
JUDGE

March 04, 2020

Jiten

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No