

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3576 of 2019 (O&M)

Date of decision: 09.01.2020

Anita Devi

... Petitioner

versus

Mai Ram & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. V.P. Sangwan, Advocate,
for the petitioner.

ARUN MONGA, J. (ORAL)

1. In appeal herein is defendant No.1 in the original suit, feeling aggrieved against grant of relief of permanent injunction in favour of plaintiffs whereby defendants have been restrained from taking forcible possession of the suit property from the plaintiffs without following due procedure of law.

2. The suit was though filed seeking a decree of declaration to the effect that plaintiffs are entitled to be declared as owners in possession of the suit land measuring 36 *kanals* 04 *marlas*, as detailed out in the decree-sheet along with seeking decree of permanent injunction to restrain the defendants from alienating the suit land by way of sale, gift, mortgage or in any other manner as well as for restraining them from causing any kind of interference in peaceful possession of the plaintiffs.

3. The trial Court declined the relief of declaratory decree, but partly allowed the suit by granting decree of permanent injunction, as

aforesaid.

4. The first Appellate Court re-affirmed the part decree granted by the trial Court and hence the second regular appeal by defendant No.1, who is sole appellant. Defendant No.2 was proceeded against *ex-parte* before the trial Court vide order dated 03.10.2012 and never defended the suit nor ever preferred any first appeal and to that extent decree has attained finality qua him.

5. Brief facts of the case first. Plaintiff-respondents claimed that they have become owners in possession of the suit land by virtue of Section 3 of Punjab Occupancy Tenancy(Vesting of Proprietary of Rights) Act, 1953 since they have been in continuous cultivating as *gair marusi* possession of the suit land from the time of their forefathers. They claimed that they have been actually cultivating the suit land even prior to the partition of India in year 1947 and their possession over the suit land as *gair marusi* tenant is evident from revenue records of 1965 onwards. At the time of partition, the suit property was allotted as a evacuee property in the names of three persons i.e. Jassu Ram, Jeet Ram and Pitu Ram all sons of Ashu Ram. Notwithstanding, they neither ever came to the village or did they ever cultivate the suit land at any point of time. While, on the other hand, plaintiffs continued to be in continuous possession as stated aforesaid. Resultantly, after the death of Jeet Ram, mutation bearing No. 2865 in respect of 1/3rd share of suit land was sanctioned in favour of his son, who later sold his share to Smt. Parvati, Smt. Savitri Devi, Smt. Kamlesh and Smt. Krishna Devi vide sale-deed No. 3627 dated 04.01.2010. After the death of Jassu Ram, mutation bearing No. 2878 in respect of his 1/3rd share was sanctioned in favour of his two sons and three daughters and widow.

They sold their shares vide sale-deed bearing No. 4709 dated 02.03.2010 to Smt. Parvati, Smt. Savitri, Smt. Kamlesh and Smt. Krishna Devi. Later, Smt. Parvati etc. sold their 24 *kanals* 03 *marlas* land to defendant No.1 Anita Devi vide sale-deed dated 17.01.2011 and remaining 1/3rd share of suit land is still in the name of Pitu Ram(defendant No.2) son of Ashu Ram.

6. In this background, plaintiffs filed a suit for declaration qua defendants to acknowledge their ownership over the suit land and to get revenue entries rectified, which eventually led to filing of civil suit.

7. As already stated, defendant No.2 chose not to contest the suit whereas defendant No.1 filed her written statement raising various preliminary objections of maintainability of suit, locus-standi, concealment of facts and for being bad on account of non-joinder and mis-joinder of parties.

8. On merits contesting defendant/ appellant submitted that neither the plaintiffs nor their predecessor-in-interest were ever in possession of the suit property nor the same was cultivated by them. On the contrary suit property was in possession of the appellant and rest of the averments in the plaint were also denied by contesting defendant.

9. Replication was also filed denying the averments made in the written statement and those of plaint were reiterated.

10. Based on the pleadings, following issues were framed:-

1. *Whether the plaintiffs are entitled to the relief of declaration as prayed for on the grounds as alleged in the plaint?OPP*
2. *Whether the plaintiffs are further entitled to the relief of injunction, as prayed for?OPP*
3. *Whether the suit of the plaintiffs is not maintainable in the present form?OPD*

4. *Whether the plaintiffs have no locus standi to file the present suit?OPD*

5. *Whether the suit is false and frivolous and has been filed just to harass the defendant?OPD*

6. *Whether the plaintiffs have not come to the court with clean hands and has concealed the true and material facts from the court?OPD*

7. *Whether the suit is bad for non-joinder of necessary parties?OPD*

8. *Relief.*

11. Parties to the suit adduced their respective oral and documentary evidence in support of their pleadings. The trial Court gave a finding that plaintiffs failed to prove the necessary ingredients for declaring them to be owners of the suit land in order to claim ownership of the suit property on the basis of occupancy as tenants. The payment of rent not exceeding the land revenue had to be proved by the plaintiffs, which they could not. Plaintiffs failed to prove that they were recorded as occupancy tenants in revenue record immediately before commencement of Proprietary Rights Act, 1953. Plaintiffs failed to prove that they were occupancy tenant by way of any agreement with the landlord or through the Court of competent jurisdiction. They failed to produce any receipt showing the payment of rent. Therefore, issue No.1 was decided against the plaintiffs. However, trial Court held that plaintiffs had successfully proved that they are in possession of the suit land by tendering revenue records i.e. Ex.P10 to Ex.P-18, which established that they had been in continuous possession of the suit land. In the premise, the plaintiffs were held entitled to grant of relief of permanent injunction restraining the defendants from forcibly dispossessing them from the suit land.

appellant/ defendant for leading additional evidence, intending to produce copy of orders passed by revenue authorities regarding correction of revenue record. But the same was dismissed observing that any order passed by the revenue Court with regard to correction of *khasra girdawaris* during pendency of the suit before the Civil Court is neither material nor relevant for effective adjudication of the dispute.

13. The first Appellate Court further held that plaintiff/ respondents had relied upon the entries of *jamabandi* Ex.D12 for the year 1974-75 and subsequent entries. Plaintiffs/ respondents also relied upon the entries of *khasra girdawaris* Ex.P10 to Ex.P18 from year 1965 to 2011. The Appellate Court below also considered the fact that after partition of the country in 1947, the suit property has been evacuee property, which is owned by Custodian Department, as reflected from entries of *jamabandi* for the year 1960-61(Ex.P-11). However, in cultivation column, it was not mentioned as to who is in possession of the same. The Appellate Court took into consideration the entries of *jamabandi* (Ex.D-11) and *khasra girdawaris* (Ex.D10 to Ex.D18) to conclude that the suit property was evacuee property and forefathers of the plaintiffs were in possession thereon being tenants. However, it turned down the plea of plaintiffs being in possession as occupancy tenant. It was held that plaintiffs are in settled possession and the person in settled possession of the suit property cannot be evicted forcibly, but except in due course of law.

14. There is no reason to interfere with the concurrent findings returned by the Courts below as per record which are neither illegal nor perverse. No question of law much less substantial question of law is involved in present appeal, which is *sine qua non* for entertaining second

appeal before this Court, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

15. In view of my discussion above and the reasons recorded therein, this appeal is dismissed in *limine* being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld. However, the appellant shall be at liberty to seek eviction of the plaintiffs/respondents from the property in question by taking appropriate steps, in accordance with law.

16. Pending applications stand disposed of.

17. No order as to costs.

(ARUN MONGA)
JUDGE

January 09, 2020
Jiten

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No