

S. No.317

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

RSA No.1758 of 1991 (O&M)

Reserved on 02.12.2022

Date of Decision:08.12.2022

Datar Singh and others

.....Appellants

Vs.

Lachhman Singh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Brahmjot Singh Nahar, Advocate for the appellants.

Mr. Sandeep Khunger, Advocate and Ms. Ramneek Kaur
Sandhu, Advocate for the respondent.

DEEPAK GUPTA, J.

Defendants of the case are in this appeal. Suit filed by the plaintiff- respondent Lachhman Singh seeking decree of permanent injunction in respect of the property in dispute was dismissed by the trial Court on 06.06.1990. However, in the appeal filed by the said plaintiff, the judgment of trial Court was reversed and the appeal was accepted and the suit was decreed vide judgment dated 23.07.1991.

2. The facts of the case, in brief, are that Harnam Singh son of Balwant Singh is admittedly owner of the land in dispute. Plaintiff claimed to be in possession of the said land for the last 20-25 years as tenant and alleged interference in his possession on part of the defendants and so, prayed for decree of injunction.

3. In the written statement, defendants claimed that two of them i.e. defendants No.4 and 5 are in possession of the suit land and that entries showing the plaintiff to be in possession of the revenue record are incorrect.

They (defendants) had filed an application for correction of khasra

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girdawari, which was pending at the time of filing of the written statement. A compromise was also effected amongst the parties with the intervention of the respectables of the village and plaintiff had agreed to suffer statement before the revenue officials to get the khasra girdawaries entered in the name of defendants No.4 and 5 on payment of ₹12,000/-, which was duly paid to him.

4. In replication, plaintiff reiterated his claim. Following issues were framed:-

- (i) Whether the plaintiff is entitled to the permanent injunction prayed for? OPP
- (ii) Relief.

5. After taking evidence produced by the parties and hearing both of them, the learned trial Court came to the conclusion that though plaintiff was recorded to be in possession of the suit property as per the revenue entries; but khasra girdawari entries in favour of defendants No.4 and 5 were ordered to be corrected by Assistant Collector vide his order dated 20.12.1989 (Ex.D1) and appeal against that order was dismissed by the Collector Fazilka on 30.04.1990. Holding that presumption attached to the entries of the jamabandi stood rebutted, trial Court dismissed the suit. However, learned First Appellate Court reversed the finding by observing that grounds of appeal before the Collector, purportedly containing the admission of plaintiff regarding the possession of the defendants, had not been proved on record and so, the presumption of truthfulness attached to jamabandi entries was not rebutted. As such, suit was decreed by reversing the findings of the trial Court.

6. It is contended by the appellants before this Court that learned First Appellate Court has erred in law and facts while holding that it was the duty of the

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appellants- defendants to prove the grounds of appeal. There was no specific denial on the part of the plaintiff- respondent regarding the factum of his admission in the grounds of appeal and so, possession of the defendants was deemed to have been admitted. Moreover, plaintiff- respondent could have produced the grounds of appeal in order to prove that he had not made any such admission. Apart from this, the admission made by the plaintiff- respondent find due mention in the order of the revenue authorities, whereby the correction in favour of appellants was directed to be made.

7. Learned counsel for the respondents supported the judgment of learned First Appellate Court.

8. Having considered the submissions of counsels for both the sides, I find merit in the appeal.

9. In jamabandi for the year 1984-1985 (Ex.P4) as well as khasra girdawari from kharif 1985 to Rabi 1987 Ex.P3, Harnam is recorded to be owner; whereas plaintiff – Lachhman is recorded to be in possession of the land in dispute. There is no dispute to the legal proposition that presumption of correctness is attached to the entries contained in revenue record, which includes jamabandi but said presumption is rebuttable. Specific stand of the defendants was that two of them i.e. defendants No.4 and 5 were in possession of suit land and entry showing the plaintiff to be in possession in the khasra girdawari was incorrect. Not only this, defendants filed an application before Assistant Collector First Grade, Fazilka for correction of girdawaries in their favour, which was allowed vide order dated 20.12.1989 (Ex.D1). Not satisfied with his order, plaintiff challenged the same before Collector Fazilka. However, his appeal was dismissed vide order dated 30.04.1990 (Ex.D3). It will be relevant to mention the

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observations made by the Collector, Fazilka while dismissing the appeal of the plaintiff- appellant. This reads as under:-

“In the first instance the Tehsildar cum A.C.II, Fazilka, vide his order dt. 29.8.1988, accepted the application of Kaka Singh, etc. filed for the correction of khasra girdawari in respect of the land and crops in dispute. Against the said order, the appeal of Lachhman Singh was accepted vide my order dt. 14.3.1989 and case remanded to the lower court for fresh decision after hearing the heirs of Harnam Singh, who was the original owner of the land in dispute. Kala Singh son of Harnam Singh, appeared in the lower court, but subsequently absented himself and the lower court proceeded ex -parte against him. In this case the A.C.II, visited the spot on 15.12.1989 in presence of respectables of the village. It has clearly been mentioned in the order under appeal that all the respectables except Joginder Singh and Lachhman Singh (appellant) stated before the A.C.II, that the respondents i.e. Kaka Singh etc., are in cultivating possession of the land in dispute. Some ladies were picking narma from the land in dispute and they told the A.C.II that they were engaged by Kaka Singh etc. for the purpose. Moreover, the appellant in his appeal has mentioned that the respondents took possession of the land from him forcibly about one year back. Under these circumstances, it is clear that the respondents i.e. Kaka Singh etc., are in possession of the land in dispute. I, am, therefore, of the opinion that the impugned order has rightly been passed by the lower court. Hence, the appeal is dismissed.”

10. It is clear from the afore-said observations made by the Collector, Fazilka that not only the Assistant Collector First Grade had visited the spot in the presence of the respectables of the village on 15.12.1989 and the defendants were

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found to be in cultivating possession, even the appellant- plaintiff had made an admission in the appeal that respondents had already taken possession from him forcibly.

11. In view of the aforesaid order passed by the revenue authorities (Ex.D1 and Ex.D3), the presumption attached to the revenue record in favour of the plaintiff- Lachhman stood rebutted. Learned First Appellate Court erred in law by disbelieving the orders of the revenue authorities.

12. As such, present appeal is allowed with costs. The judgment & decree dated 06.06.1990 of the trial Court, dismissing the suit of the plaintiff- respondent, is restored; whereas judgment and decree dated 23.07.1991 of learned Additional District Judge, is set aside.

December 08, 2022	(DEEPAK GUPTA)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No