

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

**RSA No.2790 of 1997 (O&M)  
DATE OF DECISION : 26.04.2022**

Bachan Singh

.....Appellant

versus

Chuhar Singh alias Ajmer Singh and Others

.....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Balbir Kumar Saini, Advocate for the appellant

Mr. R.S. Longia, Advocate for the respondents

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**ALKA SARIN, J. :**

The present regular second appeal has been filed by the plaintiff-appellant challenging the dismissal of his suit for declaration and permanent injunction by both the Courts below.

The brief facts relevant to the present *lis* are that one Smt. Nirmala Devi was co-owner to the extent of 1/3 share in land measuring 53 kanals - 7 marlas i.e. 17 kanals - 16 marlas situated in village Jogna Khera, Tehsil Thanesar. Vide registered sale deed dated 15.07.1985 she sold the said land to the plaintiff-appellant for a sale consideration of Rs.45,000/-. On 13.06.1986, a suit [CS No.294-1986] was filed by the present defendant-respondent for possession by way of pre-emption on the ground that he was a co-sharer in the land and hence had a superior right to pre-empt the sale in question. The said suit [CS No.294-1986] was contested by the present plaintiff-appellant. On 07.01.1988, during the pendency of the said suit for possession by way of pre-emption, the plaintiff-appellant filed the present

suit for declaration and permanent injunction praying that the entry in Column No.5 of the cultivation with regard to the land comprised in Khewat No.31, Khatauni No.49, Rect. No.16, Khasra Nos.13 (8-0); Rect. No.35, Khasra No.6/1 (4-18), 7/1 (4-13) showing as in self-cultivation of the co-owners is wrong and the correct entry should be Smt. Nirmala Devi and Sant Kumar equal co-owners through the plaintiff-appellant, *gair marusi* on the payment of 1/3 batai be passed and the Revenue Officer may be directed to make correct entries in the jamabandi for the year 1983-84 and also restrain the defendant-respondent no.1 from relying upon the said wrong entry. It was averred that though the possession of the plaintiff-appellant on the suit land was duly reflected in the Khasra Girdawari for 1983-84 on the basis of Rapat Nos.92 and 93, however, while preparing the Jamabandi for 1983-84 the revenue authorities had not effected the change in the column of cultivation.

The suit was contested by the defendant-respondents who *inter-alia* pleaded that the suit had been filed only for defeating his right of pre-emption and that the plaintiff-appellant was never in possession of the suit land.

On the pleadings of the parties, the following issues were framed :

1. Whether the impugned entry in Column No.5 with respect to the land comprised in Khewat No.31 is wrong? If so, to what effect ? OPP
2. Whether the plaintiff is in possession of the suit land ? If so, to what effect ? OPD

3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the plaintiff has no locus standi to file and maintain the present suit ? OPD
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
6. Whether the plaintiff has no cause of action to file and maintain the present suit ? OPD
7. Relief.

Vide judgement and decree dated 01.02.1996 the Trial Court dismissed the suit for declaration and permanent injunction filed by the plaintiff-appellant. Aggrieved by the judgement and decree passed by the Trial Court, the plaintiff-appellant preferred an appeal which was dismissed by the lower Appellate Court vide judgment and decree dated 24.01.1997. Both the Courts took note of the judgement dated 24.01.1989 passed by the lower Appellate Court decreeing the suit for possession by way of pre-emption filed by the defendant-respondent. The Courts below *inter-alia* held that there was no credible evidence proving that the plaintiff-appellant was in possession as a tenant on the suit land except the entry in the Khasra Girdawari and that the said entry was made without notice to those who would be adversely effected by it.

Aggrieved by the judgment and decree dated 01.02.1996 and 24.01.1997 passed by the Trial Court and the lower Appellate Court, respectively, the present regular second appeal has been preferred by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant has contended that the plaintiff-appellant was a tenant on the suit land prior to the date of the sale which is evident from the entries in the Khasra Girdawari Ex.P4 and even for the subsequent years the plaintiff-appellant has been found to be in possession. He drew the attention of the Court to the orders Ex.P2 and Ex.P6 passed by the Assistant Collector 2<sup>nd</sup> Grade and the Collector, respectively whereby possession of the plaintiff-appellant over the suit land in the subsequent years has been upheld. Learned counsel also relied upon the oral testimonies of PW1 and PW2. According to counsel for the plaintiff-appellant the totality of the evidence available on the record proved that the plaintiff-appellant was in possession of the suit land and that the entry in the Jamabandi Ex.P3 was incorrect.

*Per contra*, the learned counsel for the defendant-respondent has contended that the Jamabandi Ex.P3 was correctly recorded and that the plaintiff-appellant had failed to prove that he was a tenant on the suit land and further that the change in the Khasra Girdawaris was made without notice and hence the same could not be relied upon.

Heard learned counsel for the parties and perused the record.

As per the law laid down by a Constitution Bench of the Supreme Court in **Pankajakshi (dead) through LR's & Ors. vs. Chandrika & Ors. [2016(6) SCC 157]**, there is no requirement for framing of substantial questions of law.

In the present case the entries in the Khasra Girdawari for 1983-84 Ex.P4 shows that the plaintiff-appellant was a tenant on the suit land. According to the written statements filed by defendant no.6 (Patwari) and defendant no.7 (Kanungo) vide Rapat Roznamcha entries No.92 and 93 the

Khasra Girdawari entries were changed from self-cultivation to cultivation by the plaintiff-appellant on payment of 1/3<sup>rd</sup> batai but by inadvertence while preparing the Jamabandi for 1983-84 the said changes were not reflected. Further, for the subsequent years the plaintiff-appellant has been recorded in possession of the suit land vide order Ex.P2. The appeal of the defendant-respondent against the order Ex.P2 was dismissed by the Collector vide order Ex.P6.

In the judgment relied upon by the learned counsel for the defendant-respondent in the case of **Amal Kumar & Anr. vs. Bhupinder Singh & Ors. [1976 PLJ 26]** it was held that any change in Khasra Girdawaris without following the procedure laid down in the instructions issued by the Financial Commissioner for effecting change in Khasra Girdawaris was bad in law. According to the said decision, it is the duty of the Patwari before making any change in the existing entry at the time of harvest inspection to notify in writing the person or persons likely to be adversely affected by such a change of entries and retain on record proof of the notifications. However, in the present case there is evidence which goes to show that the plaintiff-appellant was in possession of the suit land as a tenant. The argument by the counsel for the defendant-respondent that no change in revenue entries can be made detrimental to the right of the co-owners is to be rejected as the change in the revenue entries if at best could be held detrimental would be to the interests of the vendors of the plaintiff-appellant and not the other co-owners. Further, there has been no contest to the suit by the heir of the vendor i.e. defendant no.5 who was proceeded against *ex-parte*. He was the only person who could raise a plea of being the aggrieved party.

It may also be mentioned here that the judgement dated 24.01.1989 Ex.PX, which has been noticed by the Courts below while dismissing the suit and appeal of the plaintiff-appellant, has been set aside by this Court vide judgement dated 18.04.2022 passed in RSA No.394 of 1989 and the suit of the defendant-respondent for possession by way of pre-emption stands dismissed. In that suit the sale made on 15.07.1985 in favour of the present plaintiff-appellant was sought to be pre-empted by the present defendant-respondent as a co-sharer and the present plaintiff-appellant had taken a plea that he was a tenant under the vendor on the suit land at the time of sale on payment of 1/3 batai and that the sale in his favour was not pre-emptible. This Court vide its judgement in RSA No.394 of 1989 has accepted the stand taken by the present plaintiff-appellant.

The Khasra Girdawari entries are the record of the acts of a public servant performed in the discharge of his official duties and, therefore, relevant under Section 35 of the Indian Evidence Act, 1872. It is true that no presumption of correctness attaches to them but their evidentiary value is not nil and the Court would be wrong in embarking on an assessment thereof with a presumption that they are not correct or that they cannot be relied upon unless supported by other evidence. In any event, in the present case, there is other corroborating evidence which has come on record to show that the plaintiff-appellant was a tenant on the suit land.

In view of the discussion above, the present regular second appeal deserves to be allowed.

Resultantly, the present regular second appeal is allowed. The judgements and decrees dated 01.02.1996 and 24.01.1997 passed by the Trial Court and the lower Appellate Court, respectively, are set aside and the

suit for declaration and permanent injunction filed by the plaintiff-appellant is decreed.

Pending applications, if any, also stand disposed off.

(ALKA SARIN)  
JUDGE

26.04.2022  
Yogesh Sharma

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| <p><u>NOTE :</u><br/>Whether speaking/non-speaking : Speaking<br/>Whether reportable : YES/NO</p> |
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