

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

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**RSA-2214-2019 (O&M)
Decided on : 13.05.2022**

Sher Singh and others

... Appellant(s)

Versus

Punjab State and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. J.S. Dhaliwal, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J. (Oral)

CM-5915-C-2019

There is delay of 120 days in filing the appeal.

In view of the averments made in the application, which is supported by an affidavit, same is allowed and the delay of 120 days in filing the appeal is hereby condoned.

RSA-2214-2019

This is the Regular Second Appeal against the concurrent findings recorded by both the Courts below. The learned first Appellate Court vide judgment and decree dated 05.10.2018 upheld the judgment & decree dated 08.02.2016, passed by the Addl. Civil Judge (Sr. Divn.), Sardulgarh, whereby, the suit filed by the appellants/plaintiffs for possession of land measuring 03 Kanals 02 Marlas mustil and Killa No. 309 (3-2) situated at Jourkian, Tehsil Sardulgarh, was dismissed with costs.

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

The plaintiffs while instituting the suit in question i.e. for

possession of land measuring 137 Kanals 03 Marlas, Khewat No.233, Khatoni No. 493, mustil and Killa number as detailed in the Jamabandi, which include gear mumkin land measuring 03 Kanals 02 Marlas (hereinafter referred to as 'the suit property') claimed themselves to be owners of the same on the basis of mutation of inheritance bearing No. 5887. It was also claimed by the plaintiffs that they were owners in possession of whole of the Gair Mumkin land measuring 137 K- 03 M. After the death of Bhajan Singh, previous owner of the land, an application was moved on 23.10.2012 by the plaintiffs before the Tehsildar, Sardulgarh for demarcation of the Gair Mumkin Roori land as well as the suit land. Pursuant thereto, the Halqa Patwari and Kanungo after visiting the spot on 03.01.2013, conducted the demarcation of the suit land as well as the Gair Mumkin Roori land in the presence of the plaintiffs as well as other respectables of the village. During demarcation, it was revealed that the Police Station of the defendant was in illegal possession over Gair Mumkin land measuring 3K – 2M owned by the plaintiffs, which was duly reported by the Halqa Patwari and the Halqa Kanungo in their aforementioned report. The plaintiffs, thus, claimed that the defendants were in illegal possession of the suit land and were not entitled to continue in the same. A notice under Section 80 of CPC was sent to the defendants on 07.10.2013 by way of registered post. Besides this, the plaintiffs also moved an application before the authorities concerned *qua* the illegal possession of the defendants, but in vain. The plaintiffs filed an application under the RTI Act and requested for issuance of warrants of possession, however, the Deputy Commissioner-cum-Appellate Authority, Mansa, asked plaintiff Sukhdev Kaur vide order dated 24.06.2013 to approach the Civil Court

concerned for obtaining warrants of possession.

The defendants while filing their written statement submitted that the plaintiffs had no *locus standi* to file the suit in question coupled with the fact that the suit had been filed beyond the period of limitation and the jurisdiction of Civil Court is barred. It was also submitted that the suit land bearing Khasra No. 309/(3-2) situated at Jourkian along with other land measuring 10 Kanals 08 Marlas bearing Khasra No. 246/1 (1-18), 308 (3-12), 312 (1-14), 309 (3-2), 311 (0-2) of village Jourkian, had been acquired by the Punjab Government vide order dated 04.09.1979 for construction of police quarters, which stood entered in the revenue records vide Rapat No.276, dated 14.05.1982. Ever since then the defendants had been in continuous possession over the suit land. It was also submitted that the demarcation, which was carried out on 03.01.2013, had been done behind the back of the defendants and thus, they were not bound by it. It was also submitted that the plaintiff had concealed true facts from the Court, inasmuch as, they and their heirs had challenged the notification with respect to the acquisition of the suit land before the Punjab and Haryana High Court by way of a writ petition, which stood dismissed. Besides this, it was also submitted that the defendants had initiated separate proceedings for correcting the entries in the revenue records.

On the basis of the material and other evidence led, the trial Court dismissed the suit filed by the plaintiffs and the lower Appellate Court also upheld the dismissal of the trial Court.

Learned counsel for the appellant(s) while impugning the concurrent findings recorded by both the Courts below, has vehemently argued that the Courts failed to appreciate that Jamabandi Ex.P3 (for the

year 2010-11) and Ex.P8 to Ex.P13 (Copy of Jamabandi for the year 1980-81, Copy of Jamabandi for the year 1985-86, copy of Jamabandi for the year 1990-91, Copy of Jamabandi for the year 1995-96, Copy of the Jamabandi for the year 2000-01), duly proved that the father of the plaintiffs i.e. Bhajan Singh stood recorded as owner in possession of the suit land since the year 1975 till his death and thereafter, the plaintiffs had inherited the suit land from Bhajan Singh. It was further argued that the award passed under the acquisition proceedings, had not been implemented in the revenue records and the defendants had not even taken possession of the suit land as per the acquisition proceedings. Thus, it was evident that the defendants were in illegal possession of the suit land and the plaintiffs were entitled to take back the same. *Qua* the delay in instituting the suit in question, learned counsel argued that it was only after the demarcation had been carried out of the suit land on 03.01.2013, that they learnt about the illegal possession of the defendants and immediately thereafter, they instituted the suit in question. Hence, the suit had been instituted without any delay and within limitation from the date they learnt about the illegal possession of the defendants.

I have heard learned counsel for the appellant(s) and perused the relevant material on record.

It is a matter of record that the suit land was acquired by the Punjab Government vide order dated 04.09.1979 for the construction of police quarters. DW-1 – Balraj Singh duly proved the acquisition of suit land along with other land whereas, Rapat dated 16.04.1982 (Ex. DW-2/A) was proved by the DW-2/ Amandeep Kaur, to the effect that the possession of the suit land had been taken as per the acquisition proceedings on

16.04.1982.

In the circumstances, the plaintiffs cannot derive any benefit of the entries in the revenue record being in the name of Bhajan Singh i.e. father of the plaintiffs. It may be observed that Jamabandis and Khasra Girdawaris cannot be taken to be documents of title, because, they are prepared only for the limited purpose of assessment of revenue. It also needs to be noticed here that the writ petition Ex.DW/1A, which was filed by Bhajan Singh, father of the plaintiffs, was dismissed by this Court on the ground that said Bhajan Singh had given his consent for the acquisition of the suit land for public purposes. Still further, Randhir Singh, retired Kanungo, while stepping into the witness-box as PW-2, deposed about the application dated 23.10.2012 (Ex.P1) and his report dated 03.01.2013 (Ex.P2), *qua* the demarcation carried out, admitted, during his cross-examination that the demarcation report was completely silent, as to from which pacca point, he had started the demarcation on the suit property. Therefore, the demarcation as well as the demarcation report prepared by PW-2/Randhir Singh, retired Kanungo and Halqa Patwari, were not in accordance with the High Court Rules and orders for demarcation of land. In the circumstances, the plaintiffs cannot derive any benefit in their favour out of the demarcation report prepared in the year 2013. Further, it also needs to be pointed out that the suit in question is hopelessly time barred, as it has been filed after 32 years from the date when the defendants took possession of the suit land vide Rapat dated 01.04.1982 more so when the plaintiffs had due knowledge about the same since 1982.

Upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the

conclusions so arrived at by the Courts below were either contrary to the record or suffered from any material illegality. Still further, no question of law, much less, substantial question of law arises for consideration in the present appeal. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

May 13, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*