IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1610 of 2007 (O&M)
Date of Order:05th December, 2022
Reserved On:11.11.2022

Chhaju (since deceased) through his LR ...Appellant

Versus

Sante and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Punia, Advocate, for the appellant.

Mr. P.R.Yadav, Advocate, for the respondents.

ANIL KSHETARPAL, J

1. While assailing the judgment and decree passed by the First Appellate Court, the defendant has come up in appeal. The trial court dismissed the plaintiffs' suit for grant of a decree of declaration, whereas, the First Appellate Court while reversing the judgment and decree passed by the trial court, has decreed the suit.

2. The following questions need adjudication:-

(1) What is the period of limitation for filing a suit by the plaintiffs on the ground that the previous judgment and decree passed on the basis of a concession given by his predecessor-in-interest before the court is the result of impersonation?

(2) If the plaintiffs fail to discharge the initial/primary burden to prove the basic/fundamental facts on which

the entire foundation of their case rests, then, whether their suit can be decreed on the premise that since the parties are aware of the pleadings and have joined an issue, so the question of burden of proof loses significance?

(3) Whether an adverse inference is liable to be drawn against the defendant for failing to enter into the witness box particularly when the plaintiffs have failed to establish their case?

(4) Whether the negative onus to prove that the plaintiff's allegations of impersonation of their predecessor-in-interest, in the previous suit in which a consent decree has been passed, are incorrect, can be placed on the defendant?

(5) Whether it is appropriate for the court to decree the plaintiffs' suit solely on account of failure of the defendant to lead the link evidence for connecting the previous khasra numbers with the new khasra numbers allocated post the consolidation of holdings of the land particularly when the aforesaid fact is not in issue between the parties to the suit?

3. The relevant facts, in brief, are required to be noticed which are as follows:-

Late Sh. Dhanu had two sons, namely, Sh. Chhaju and Sh. Hira. Vide sale deed dated 25.09.1941 which was registered on 04.10.1941, late Sh. Hira purchased 10 bighas of the land. Sh. Chhaju, vide sale deed (Ex.D9) dated 27.11.1941, purchased 4 bighas of land comprised in khasra no.558/165. Sh. Hira, vide another sale deed dated 04.01.1944 purchased 9 bighas and 16 biswas of land from Smt. Kaushalya. Sh. Chhaju, while claiming that his brother Sh. Hira, in collusion with the consolidation authorities, has got the suit property entered in his name, filed a suit on 16.09.1978. Sh. Hira entered appearance in the suit and filed the written statement admitting Sh. Chhaju's claim in the suit. Thus, the court vide judgment and decree dated 22.12.1978 decreed the suit filed by Sh. Chhaju with respect to the land measuring 7 kanals and 8 marlas comprised in Rect. No.24, Killa No.8(7-10). On the basis of the aforesaid judgment and decree passed by the civil court, the land measuring 7 kanals and 10 marlas was recorded in the revenue record in favour of Sh. Chhaju in the year 1983. Although, the exact date of death of Sh. Hira has not come in the evidence, however, the plaintiffs, while appearing in evidence on 19.05.2004, have admitted that their father Sh. Hira died around 16/17 years ago. Thus, Sh. Hira died somewhere in the year 1987-1988. The successors-in-interest (the plaintiffs) of Sh. Hira filed a suit on 06.09.1996 praying that a decree of declaration be passed in their favour declaring that the judgment and decree dated 22.12.1978 and the mutation no.869 is illegal, null, void ab nitio and non-est in the eyes of law, being based upon fraud played upon the Court by impersonation of Sh. Hira and does not effect the rights of the plaintiffs in the suit property in any manner. The plaintiffs also sought a declaration that they are owners in possession of the property. In para 3, the plaintiffs claim that the property is undivided Joint Hindu family property which is ancestral and coparcenary in nature. In para 6(i), 6(ii), 6(iii) and 6(iv) they have alleged that Sh. Hira never appeared in the aforesaid suit. The plaintiffs further claim that the defendant, along with certain bad elements, who were duly armed with lethal weapons, came to the suit land on 01.08.1996 and threatened the plaintiffs that he will forcibly dispossess them. Thereafter, the plaintiffs, rushed to the patwari and after confirming from the revenue record, requested the defendant to get the decree dated 22.12.1978 set aside but the defendant finally, refused to accede to the plaintiffs' request on 31.10.1996. They claim that the cause of action arose on 31.08.1996 i.e the date of final refusal by the defendant.

4. The defendant while contesting the suit, has claimed that the suit property is his self acquired property acquired vide sale deed dated 27.11.1944 from Sh. Kanwar, Sh. Bhopal, Sh. Krishan who are sons of Shri Krishan and since then, he is the exclusive owner in possession of the property. It was also asserted that Sh. Hira in the previous suit, entered appearance and suffered a statement against his interest on oath before the concerned court resulting in a consent decree dated 22.12.1978. While asserting that Sh. Hira himself appeared before the court, he produced the copy of the written statement and the statement made on oath by late Sh. Hira before the concerned court. It is further submitted that Sh. Chhaju's suit was dismissed in default and on the same date, both the brothers, namely, Sh. Chhaju and Sh. Hira filed an application for restoration of the suit and subsequently, the plaintiffs' father, namely, Sh. Hira conceded to the claim of Sh. Chhaju. Thus, not only the suit was restored but it was also decreed.

In the replication, the plaintiffs, once again, reiterated that Sh. Hira never appeared in the Court in 1978 and Sh. Chhaju did not purchase the suit land either on 27.11.1941 nor any sale deed was executed in his favour subsequently. The sale deed, if any, is false, forged and fictitious. In response to the plea of the defendant that the suit is barred by limitation, the plaintiffs, in replication, stated that when the plaintiffs came to know about this fact, they filed the present suit. Para 8 of the replication is extracted as under:-

> *"8. That para No.8 of the written statement as it has been stated is denied being wrong and incorrect and that of the plaint is correct and is hereby re-asserted. When the plaintiffs came to know about this fact, then they filed the present suit. The decree dated 22.12.1978 is not at all binding on the rights of the plaintiffs as the same is invalid, void, abinitio and illegal rather the same was obtained by playing fraud upon the learned court by the defendant by way of suppressing the material facts of the case."*

5. As noticed, the trial court dismissed the suit, whereas, the first appellate court has reversed the judgment and decree passed by the trial court. In substance, the first appellate court has recorded the following reasons while accepting the plaintiffs' appeal:-

(i) Since the defendant has not been able to connect the land purchased vide sale deed Ex.D9 with the suit land, therefore, it cannot be said that the defendant has purchased the suit land in the year 1941 or that during the consolidation proceedings, Sh. Hira got it mutated in his favour. Defendant Sh. Chhaju did not produce any evidence to show that he was ever recorded as the owner in possession of the suit land in the revenue record prior to the impugned decree dated 22.12.1978. Thus, his allegation that Sh. Hira got his land mutated during the consolidation of holdings appears to be factually incorrect

(ii) From the revenue record, it is evident that the suit land was owned by Sh. Hira from 1956-58.

(iii) The defendant has failed to prove Sh. Hira's written statement and deposition before the court in civil suit No.191 of 1978.

(iv) Sh. Hira appeared in evidence on 27.10.1978. Late Sh. Dalpat Singh, Advocate for Sh. Chhaju, identified him. Therefore, it is proved that Sh. Hira did not engage any counsel nor was served with the summons by the court.

(v) Sh. Chhaju, the defendant, did not enter the witness box either to prove his stand in the written statement or to prove that it is his brother Sh. Hira, who has appeared in civil suit no.198 of 1978.

(vi) The First Appellate Court has also drawn an adverse inference against the defendant on the ground that Sh. Chhaju did not appear in the evidence, though, he had special knowledge of the facts. The court has held that the plaintiffs discharged the initial burden by producing evidence that Sh. Hira did not engage any counsel nor he was identified by any person known to him except by the counsel who represented Sh. Chhaju in civil suit no.191 of 1978. Hence, the onus shifted on the defendant to prove that it was in fact, his brother Sh. Hira who appeared in the prior suit.

(vii) Before the First Appellate Court, though the plaintiffs moved an application for permission to lead the additional evidence to compare the thumb impressions of Sh. Hira with his thumb impressions on a registered mortgage deed which was allowed, however, the Fingerprint Bureau of Forensic Science Laboratory, Madhuban, expressed its inability to give an opinion as the thumb impressions of Sh. Hira were found to be smudged, super imposed and faint.

(viii) The First Appellate Court has also held that the burden was on Sh. Chhaju to prove that the decree was not based upon fraud. On the question of limitation, the court held that the suit is within limitation because a mere wrong entry in the revenue record does not give rise to a cause of action. Further, the Court observed that the deposition of the PW7-Sant Lal that the defendant tried to dispossess them forcibly on 01.08.1996 from the suit land has remained unchallenged. It was, thus, held that the limitation will begin to run from 01.08.1996.

6. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the record.

7. Before proceeding further, it is not disputed before this Court that Sh. Chhaju did purchase 4 bighas of land from khasra no.558/165 vide sale deed dated 27.11.1941, Ex.D9, from Sh. Kanwar, Sh.Bhopal Kishan, sons of Sh. Kanwar Shri Kishan.

8. The plaintiffs, in order to prove their case, have examined PW1-Gyasi Ram, PW2-Take Chand, PW3-Sat Narain, PW4-Raghu Nath, PW5-Karan Singh, PW6-Jagan, to show that they are in possession of the property. These witnesses have also stated that when late Sh. Hira died, his eye sight was weak and mental strength was compromised.

9. On behalf of the plaintiffs, Sh. Sant Ram alias Sante, son of Sh. Hira, has appeared in evidence as PW7. He has stated that Sh. Hira neither appeared in the Court nor he engaged any counsel or filed any written statement. Claiming to be in possession of the property, he stated that

despite repeated requests the defendant has refused to get the forged judgment and decree declared as void and the defendant wants to enter possession in an illegal manner. He also deposed that the suit has been filed after the death of Sh. Hira. In the considered view of the Court, the finding of the First Appellate Court, that the deposition of the plaintiff (PW7 Sant Lal) stating that the defendant tried to dispossess them forcibly from the suit land on 01.08.1996 has gone unchallenged, is a result of misreading of the evidence. This court has also carefully read the cross examination of PW7 Sant Lal @ Sante. In the cross-examination, he does not state that the defendant tried to dispossess them forcibly on 01.08.1996. In fact, the plaintiffs have neither led any evidence nor stated in the deposition that they were unaware of the judgment and decree dated 22.12.1978 before 01.08.1996. It may be noted that though, the plaintiffs have not specifically pleaded the date of knowledge of the decree, however, on a consolidated reading of para 7 and 8, one can assume that the knowledge of the decree passed in the year 1978 is being pleaded from 31.08.1996. However, the said fact has not been deposed in the oral evidence.

10. Article 59 of the Schedule to the Limitation Act, 1963, which governs the subject matter of the present case, is extracted as under:-

Description of suit	**Description of suit Period of limitation**	**Time from which period begins to run**
To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

11. It is evident that the period of limitation in such a case is three years which will begin to run from the date on which the facts entitling the plaintiffs to have the instrument or decree cancelled or set aside or the contract rescinded, first became known to them. In the absence of evidence to show that the knowledge of the decree was acquired at a belated stage, it is safe to assume that the plaintiffs had such knowledge on the date of passing of the judgment and decree itself. It may be noted here that in the year 1983, the entry in the revenue record was changed and in the column of ownership the name of Sh. Chhaju was entered. It may be noted here that even before the year 1983, Sh. Chhaju was reflected to be in possession of 4 kanals of land though the ownership was in favour of Sh. Hira in the jamabandies produced on the file. The plaintiffs were required to show the first point in time when they became aware of the passing of the judgment and decree. This is not a simpliciter suit for declaration based on ownership. Through this suit, the plaintiffs have prayed for the setting aside of the judgment and decree passed by a competent court. Thus, the First Appellate Court has wrongly held that the suit was within limitation.

12. It may be noted here that the First Appellate Court has held that the defendant failed to lead evidence to connect the suit land comprised in Rect. No.28, khasra no.8(7-10) with the land purchased vide sale deed dated 27.11.1941. It may be noted here that this was never a point in issue between the parties. A party to the suit can be called upon to prove a fact only if the same is a fact in issue in the case. Once the plaintiffs, while filing the suit or while filing the replication, have failed to assert that the suit

land is not the same land which was purchased by Sh. Chhaju vide sale deed dated 27.11.1941, then, the First Appellate Court has erred in accepting the appeal. The First Appellate Court has allowed the appeal while observing that Sh. Chhaju has failed to produce evidence to show that during the consolidation of holdings, Sh. Hira got the entire land mutated in his favour. It may be noted here that in the replication, the plaintiffs have denied that Sh. Chhaju ever purchased any land vide sale deed dated 27.11.1941, whereas, in the previous judgment dated 22.12.1978, Sh. Hira had admitted that in the consolidation of holdings, Sh. Chhaju's land was also mutated in his favour. Moreover, it is evident that Sh. Chhaju became owner of 4 bighas of land on the basis of the sale deed dated 27.11.1941 and this fact would not evaporate in the air merely because a wrong entry has been made at the time of the consolidation of holdings. Sh. Chhaju would still continue to be the owner of the property. It is not the case of the plaintiffs that Sh. Chhaju is already in possession of the aforesaid property which is separate from the suit property. In the absence thereof, the First Appellate Court has committed an error in making the aforesaid observations.

13. The First Appellate Court has also erred in taking note of the fact that Sh. Hira is recorded as the owner of the entire land in the jamabandies for the year 1957-58 to 1980-81. No doubt, the entries in the jamabandi carry a presumption of correctness, however, these are not the documents of tile of land. In the present case, there is a registered sale deed in favour of Sh. Chhaju which is well recognized as a document of ownership. Moreover, from 1970-71, Sh. Chhaju has been recorded as having the possession of land measuring 4 kanals on account of rishtedari

(due to relationship with the owner). Thus, Sh. Chhaju continued to be in possession. In 1978, Sh. Chhaju filed a suit alleging that his brother Sh. Hira in connivance with the consolidation authorities, got the entire land mutated in his favour. Sh. Hira, while appearing in the suit, conceded to the claim of Sh. Chhaju resulting in the decree dated 22.12.1978. The aforesaid judgment and decree was given effect to in the revenue record in the year 1983. Since then, Sh. Chhaju has been recorded as the owner in possession of the land comprised in Rect. No.24, Khasra No.8(7-10). The present suit was filed in the year 1996. In such circumstances, the First Appellate Court has given undue importance to the entry in the revenue record.

14. The First Appellate Court has also erred in observing that the defendant has failed to prove the written statement as well as the deposition of Sh. Hira in civil suit no.191/259 of 1978 decreed on 22.12.1978. It may be noted here that the defendant has proved his plaint filed on 16.09.1978 as well as the judgement and decree dated 22.12.1978. On a careful reading thereof, it is evident that Sh. Chhaju, while filing the suit had claimed that he has purchased the suit land vide sale deed dated 27.11.1941, which his brother, Sh. Hira, wrongfully got entered in the latter's name in the revenue record.

15. In the judgment dated 22.12.1978, the court has recorded that the defendant (Sh. Hira) appeared and filed the written statement admitting the claim of the plaintiffs. The fact of Sh. Hira's deposition has also been recorded in the judgment. Once the said judgment has come on record, then, there was hardly any scope for observing that the defendant failed to prove

the written statement and deposition of Sh. Hira in the previous suit. The facts and events noticed in the judgment passed by the Court should not have been overlooked by the First Appellate Court. It has come on record that the plaintiffs' counsel Sh. Dalpat Singh had died before the defendant could examine him in evidence, so the defendant examined the clerk of the counsel, who proved the plaint. Moreover, the onus was on the plaintiff to prove that Sh. Hira never appeared in Court. Further, there is a presumption of the existence of the facts in terms of Section 114, illustration (e) of the Indian Evidence Act, 1872. It provides that there is a presumption that judicial acts and official acts have been regularly performed. Further, Section 80 of the Indian Evidence Act, 1872 provides that whenever any document is produced before any court, purporting to be record or memorandum of the evidence, given by a witness in a judicial proceeding or a statement or confession taken in accordance with law, and signed by any Judge/Magistrate, the Court shall presume that such document, statement, confession is genuine and duly taken. It is well settled that where the correctness of a concession/compromise recorded before the court is challenged in a subsequent suit, the court will not allow such challenge unless the challenger has produced uncontroverted evidence to that effect. The judicial records are deemed to be correct and are not open to doubt in a casual manner. The Judges cannot be dragged into the aforesaid arena. The judgments cannot be treated as mere counter attacks in the puddle of litigation. The proceedings recorded by the court are considered sacrosanct, unless proved otherwise. If a party claims that the proceedings of the court have been wrongly recorded in the order or the judgment, it is incumbent upon the party, while the matter is still fresh in the mind of the Judge, to draw the attention of that Judge, who has made the record, to such facts showing discrepancy or fraud.

16. The First Appellate Court has overlooked the aforesaid position of law. It is not in dispute that the judgment and decree was passed by a court of competent jurisdiction. The First Appellate Court has tried to create a doubt on the ground that Sh. Dalpat Singh, Advocate, representing Sh. Chhaju had identified Sh. Hira and he has not been examined. This may be one of the circumstance, however, it is not conclusive unless corroborating evidence has been produced. The plaintiffs are children of late Sh. Hira. He remained alive for a period of nearly 9-10 years after the decree was passed. Sh. Hira, during his lifetime, never challenged the correctness of the deposition recorded in his name or his thumb impressions on the written statement. It was for the plaintiffs to prove the facts that Sh. Hira never appeared in the court, filed the written statement and gave his evidence. The written statement of Sh. Hira bears his thumb impressions at two places. His deposition in the court also bears his thumb impression. In such circumstances, the plaintiffs were required to prove the fact of impersonation by leading positive evidence as their entire case is based upon the fact that Sh. Hira never appeared in the previous suit and someone impersonated him. The First Appellate Court has erred in observing that the question of onus becomes insignificant once the parties are alive and have joined the issue. In the book, principles and digest of law of evidence authored by Chief Justice M. Monir, 8th Edition, it has been noticed that the expression “burden of proof” has two distinct and frequently confused meanings. The author has relied upon the observations made in ***Basiruddin Sarkas vs. Sahebulla***

<u>Pramonick, 927 C 966 equivalent 105 IC 857</u>. The author notices that the burden of proof as to the matter of law and pleadings, the burden, as it has been called, of establishing the case,whether by preponderance of probabilities or beyond reasonable doubt, forms the first type of burden of proof and it always rests on the party who wishes the court to pass the judgment in his favour, whereas, the second type of is burden of proof is in the sense of introducing the evidence and lies on the party who would fail if no evidence is led at all on either side. The author has interpreted that the first type of burden of proof is provided in Section 101 of the Indian Evidence Act, 1872, whereas, the second type is provided in Section 102 of the Indian Evidence Act, 1872. Moreover, it has been observed that the burden of proof in the first of the above two senses is fixed at the beginning of the trial itself by the state of the pleadings and if remains unchanged throughout the trial i.e it never shifts, whereas the burden of proof in the second sense is constantly shifting. The First Appellate Court has overlooked the aforesaid well stablished rule of burden of proof embodied in Section 101 to 106 of the Indian Evidence Act, 1872. It was the plaintiffs who came to the court alleging that Sh. Hira never appeared in the civil suit no.191/251 of 1978 and prayed the court to pronounce a judgment to that effect. Hence, it was for them to establish and prove these facts, at the first place. Shri Sant Lal @ Sante stated that Sh. Hira neither appeared in court nor engaged any counsel, or filed the written statement. However, no material evidence was produced to disprove these facts and rebut the presumption of Section 80 and Section 114 (e) of the Indian Evidence Act, 1872 which is drawn with regard to the genuineness and existence of such facts. Moreover, the plaintiffs have withheld the best evidence. If a party, in whose possession the best evidence is available, despite being given an opportunity fails to produce the same, an adverse inference is required to be drawn against such a party by the Court. In such circumstances, the court is justified in drawing an adverse inference that had such evidence been produced, it would have gone against the person who suppressed or withheld it. This presumption also has its genesis in illustration (g) of Section 114 of the Evidence Act, 1872.

17. The next reason assigned by the First Appellate Court is that since Sh. Chhaju did not enter in the witness box in this suit particularly when the facts were in his special knowledge, therefore, an adverse inference has been drawn of the aforesaid fact. It is noticed here that Sh. Chhaju, the defendant on 29.09.2004 filed his affidavit (dated 24.07.2004) in lieu of his examination-in-chief. In the statement dated 29.09.2004 it is recorded that his age is 90 years. On the request of the counsel representing the plaintiffs, his cross examination was deferred to 30.10.2004. On 30.10.2004, the Presiding Judge was on leave, hence, the case was taken up on 29.10.2004 and adjourned to 24.11.2004. On 24.11.2004, DW was not present. Thereafter, on 17.12.2004, Sh. Chhaju executed a power of attorney in favour of his son to depose on his behalf. The court has observed that if Sh. Chhaju could go to the office of the Sub Registrar, he could have come to the Court as well.

18. It may be noted here that the burden to prove that Sh. Hira was impersonated in the civil suit no.191/259 of 1978 was on the plaintiff. It is not the case that Sh. Chhaju never appeared in evidence. Moreover, he was 90 years of age at the relevant time. It was on the request of the learned

counsel representing the plaintiffs that the case was adjourned and thereafter, remained pending. In such circumstances, particularly when sufficient evidence had been led by the defendant to establish his defence, it was not appropriate for the court to draw an adverse inference against the defendant. The first appellate court has relied upon the judgment passed by the Supreme Court in ***Vidhyadhar vs. Manikrao and another AIR 1999 SC 1411.*** It may be noted here that the aforesaid judgment do take a view that if a party does not appear in evidence to face the cross examination, the court is entitled to draw an adverse inference against it. However, in ***Pandurang Jivaji vs. Ramchandra Gangadhar Ashtekar (Dead) by Lrs and Ors., 1981 (4) SCC 569***, the Supreme Court held that such an adverse inference can be drawn for non appearance of the party only if the evidence otherwise is also insufficient to prove a fact. It may be noted here that drawing of an adverse inference has its genesis in illustration (g) of Section 114 of the Indian Evidence Act, 1872 which provides that the Court may presume existence of certain facts if the evidence which could be and is not produced would, if produced, be unfavourable to the person who withhold it. Before drawing an adverse inference, the Court is required to record a finding that the party has intentionally or malafidely withheld the same. Keeping in view the age of Sh. Chhaju and the facts of the case, the conclusion of the First Appellate Court drawing an adverse inference was not appropriate particularly when the burden to establish their basic case was always on the plaintiffs.

19. The First Appellate Court has also erred while observing that the burden was on Sh. Chhaju to prove that the judgment and decree was not

based upon fraud. The Court has placed the burden of proof on the defendant in the negative which is not normally permissible unless the statute makes a provision to that effect or the facts compell the court to place onus on a particular party or the facts alleged by the plaintiffs are admitted. As already noticed, the plaintiffs are the children of Sh. Hira. They ought to have produced evidence to prove that the thumb impressions of Sh. Hira on the written statement filed in the previous suit as well as the thumb impressions on his deposition in the court were never affixed by late Sh. Hira. In other words, the plaintiffs had to prove that Sh. Hira never thumb marked the written statement as well as the his deposition. It was even convenient for the plaintiffs to prove that fact because they are his children. The defendant could not be called upon to prove that the thumb impressions of Sh. Hira are genuine. Moreover, in view of illustration (e) of Section 114 of the Indian Evidence Act, 1872, the court has failed to draw the presumption which could have reasonably been drawn in the present case. Moreover, there is no evidence to prove that Sh. Hira was ever under the influence of Sh. Chhaju. Sh. Hira had purchased the property through two different sale deeds in the years 1941 as well as 1944. He had also executed a mortgage deed in the 1960's. He had appeared in the court in 1978. In such circumstances, Sh. Hira was sufficiently exposed to the outside world.

20. The next reason assigned by the First Appellate Court is also equally erroneous. It may be noted here that the jamabandies from the years 1985-86, 1990-91, 1995-96 and 2000-01 prove that Sh. Chhaju was in exclusive possession of the suit land. Even khasra girdwari for the crops “Sawani” 1996 and “Hari” 1997 proves that Sh. Chhaju was in possession.

Moreover, even as per the jamabandies produced by the plaintiffs for the year 1970-71 , it is evident that though in the ownership column the entry was in the name of Sh. Hira, however, Sh. Chhaju was in possession of 4 kanals of land out of 7 kanals and 10 marlas. In these circumstances, the First Appellate Court has erred in recording a finding that Sh. Hira or the plaintiffs continued to be in possession of the property. The entries in the jamabandies carry a presumption of correctness. Moreover, it is evident that Sh. Chhaju, after the judgment and decree was passed in 1978, had continued in possession and there was no occasion for him to permit Sh. Hira or the plaintiffs to enter into the possession. Sh. Chhaju never complained that the plaintiffs ever tried to enter into his possession. It is the plaintiffs who came to the court alleging that they are in possession of the property. They failed to explain how they continued in possession particularly when, since 1970-71, Sh. Chhaju is recorded to be in possession of 4 kanals of land out of 7 kanals and 10 marlas. Moreover, on a careful reading of the plaint (Ex.PW2) filed in the year 1978, it is evident that Sh. Chhaju has claimed that he is the owner in possession of the property and Sh. Hira has no connection therewith. Sh. Hira, while admitting the facts stated in the written statement, further got his statement recorded while admitting the case of the plaintiff. Thus, the possession of Sh. Chhaju was admitted by Sh. Hira in the year 1978 and he was declared as the owner in possession of the property. There is no evidence that after 1978, Sh. Chhaju was ever dispossessed. Hence, the finding recorded by the First Appellate Court on the issue of possession is also erroneous.

21. Keeping in view the aforesaid discussion, the result is inevitable. The First Appellate Court has erred in reversing the judgment and decree passed by the trial court.

22. Hence, the judgment passed by the First Appellate Court is set aside, whereas, the judgment and decree passed by the trial court is restored.

23. The Regular Second Appeal is allowed.

05th December, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned :YES/NO

Whether reportable :YES/NO