

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

RSA-96-2013(O&M)

Date of decision:-8.12.2022

Satgur Singh and others

...Appellants

Versus

Dera Akhara Dharam Dhajja, Patiala

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rakesh Gupta, Advocate
for the appellants.

Mr.Hardeep Singh, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Satgur Singh, Satpal Singh and Bharpur Singh, all sons of late Sh.Udey Singh, residents of village Jhandi, Tehsil and District Patiala had filed a suit against Dera Akhara Dharam Dhajja, Patiala through Mahant Gian Dev, Chela Mahant Balbir Singh, resident of Dera Akhara Dharam Dhajja, Top Khana More, Patiala, seeking a declaration that the plaintiffs are lessees of the land measuring 31 bigha 5 biswas detailed in head-note of the plaint situated at village

Jhandi, Tehsil and District Patiala and khasra girdawari to be corrected in the name of the plaintiffs instead of Udey Singh. The plaintiffs also sought relief of permanent injunction restraining the defendant and persons claiming under it from dispossessing the plaintiffs from such land.

2. As per the case of the plaintiffs, their father Sh.Udey Singh since died was in possession of the suit land as lessee @ Rs.225/- per year under the defendant since the year 1960; during the lifetime of Sh.Udey Singh, all the CHAKOTA had been paid and name of Udey Singh was reflected to be in possession of the suit land in the girdawari; Udey Singh had been given suit land on CHAKOTA since the year 1960, however in the ownership column of the jamabandi name of defendant had been recorded; after death of Mahant Balbir Singh, Mahant Gian Dev succeeded as Mahant; the plaintiffs had already deposited CHAKOTA amount for the year 2007; Udey Singh had expired on 22.9.2002 and he had executed a registered will in favour of the plaintiffs on 24.11.1988 vide which all the rights had been transferred in favour of the plaintiffs and after death of Udey Singh, the plaintiffs have been in peaceful possession of the suit land and they have been cultivating the same paying the CHAKOTA to defendant after death of their father Udey Singh.

According to the plaintiffs, they have already deposited CHAKOTA/lease money in the bank for the year 2007; the plaintiffs

approached the revenue authorities for correction of the record inasmuch as Udey Singh was still reflected to be in possession of the suit land though he had died; the application was made for correction of khasra girdawari from the name of Udey Singh to that of plaintiffs, however the necessary correction was not carried out by the revenue authorities; therefore the plaintiffs had withdrawn that application from there; the defendants rather threatened to take forcible possession of the land to which they had no right. Feeling aggrieved, the plaintiffs had brought suit in question.

3. On notice, the defendant appeared and filed written statement raising various legal objections that suit was barred; the plaintiffs had not come to the Court with clean hands; suit was barred under Section 41(h) of the Specific Relief Act. On merits, the defendant submitted that Udey Singh had no right to execute the Will in favour of the plaintiffs regarding the land owned by Dera Akhara Dharam Dhajja; the tenancy of the land of religious institution of the said Dera is not heritable; no CHAKOTA had been accepted by the Dera; an application for correction of khasra girdawari had been filed by the plaintiffs, which was dismissed and appeal filed was also dismissed by Collector, Patiala; the plaintiffs had chosen to avail the remedy under Land Revenue Act before the revenue authorities. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

4. The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
3. Whether the suit of the plaintiff is barred by the provisions of Section 158(2) of Punjab Land Revenue Act? OPD.
4. Whether the plaintiff has not come to the Court with clean hands? OPD.
5. Whether the plaintiffs have no cause of action to file the present suit? OPD.
6. Whether the suit of the plaintiffs is barred under Section 41(b) of the Specific Relief Act? OPD.
7. Whether the plaint is liable to be rejected under Order 7 Rule 11 CPC? OPD.
8. Relief.

5. The parties led evidence in support of their respective claims.

6. During the course of their evidence, plaintiff No.1 Satgur Singh got his own statement recorded as PW1 and submitted his

affidavit Ex.PW1/A in which he had repeated on oath the case of the plaintiffs given in the plaint. He proved the documents CHAKOTA receipts as Ex.P1 to Ex.P30, copy of jamabandi for the year 1965-66 to year 2005-2006 as Ex.P31 to Ex.P39, copy of death certificate of Udey Singh as Ex.P40, original copy of registered will dated 24.11.1988 as Ex.P41.. The plaintiffs further examined Sh.Balkar Singh, Lambardar as PW2, who in his affidavit Ex.PW2/A supported the version of the plaintiffs that their father Udey Singh was in possession of the suit land and after his death the plaintiffs being in possession of land measuring 31 bigha 5 biswas. According to him, the plaintiffs have been regularly paying the CHAKOTA and cultivating the land of suit after death of their father. The third witness examined by the plaintiffs happened to be PW3 Roop Singh, who tendered in evidence his affidavit Ex.PW3/A wherein he submitted that he is real brother of deceased Udey Singh .

Since the plaintiffs failed to conclude their evidence despite availing of several opportunities, their evidence was closed by order of the Court.

7. In rebuttal, the defendant examined Mahant Hari Singh, General power of attorney holder of Mahant Gian Dev Ji Chela Mahant Balbir Singh as DW1, who in his affidavit Ex.DW1/A repeated on oath the case of the defendant as given in the written statement. He proved in evidence various documents.

Since the defendant failed to conclude its evidence despite availing ample opportunities, the same was also closed by Court order.

8. After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiffs and in favour of the defendant, whereas remaining issues No.3 to 7 were decided against the defendant and in favour of the plaintiff. Resultantly, suit of the plaintiffs was dismissed with costs. This was so done vide judgment and decree dated 23.5.2011.

9. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Patiala, which was assigned to Additional District Judge, Patiala, who vide judgment and decree dated 26.11.2012 dismissed the same.

10. Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and their suit be decreed.

11. Notice of the appeal was issued to the respondent, who put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. In this case both the Courts below by proper appraisal of

evidence and correct interpretation of law have come to the conclusion that from the perusal of oral as well as documentary evidence i.e. copy of jamabandi for the year 1965-66 to year 1985-86 as Ex.P31 to Ex.P35, the land is shown in the name of 'Dera Akhara Dharam Dhajja' through Pandit Sucha Singh and in the jamabandis 1990-91 to 2005-06 Ex.P36 to Ex.P39, the land in dispute is shown to be in the name of 'Dera Akhara Dharam Dhajja' through Mahant Balbir Singh Chela Mahant Hardev Singh and name of father of appellants Sh.Udey Singh was in the column of cultivation. Referring to the receipts statedly obtained after payment of CHKOTA i.e. Ex.P1 to Ex.31, the First Appellate Court observed that no documentary evidence was there on record and no such agreement between respondents and Udey Singh came on the file that Udey Singh was making payment to Dera as Chakotedar . As regards the will set up by the defendants as Ex.P41, the First Appellate Court observed that the first question to be determined is whether Udey Singh can execute will in favour of the appellants for the land of which he is not owner and commented that nobody can execute will qua the property of which he is not the owner. Udey Singh just claiming himself to be Chakotedar and tenancy rights being not heritable, further will Ex.41 having not been proved on record, thus execution of the will was not proved. There is no document on record to show tenancy of appellants as well as their father. No other oral

evidence was found to be there. Therefore, the appellants are not entitled to any declaration. Going further the First Appellate Court observed that since the appellants had failed to establish on record that they are in possession of any particular khasra number with their residence being separate and agriculture and mess being also separate since the plaintiffs have admitted in their cross-examination that all the brothers are cultivating the dera land in routine but it comes out that any of the appellant had not remained in continuous possession over any specific number of dera land. Furthermore, the plaintiffs having approached the revenue authorities first to get the entries corrected in their own name from that of their father, this application had been dismissed by Assistant Collector II Grade. In absence of such evidence, the appellants could not be held entitled to any declaration or permanent injunction as prayed for.

14. Now before this Court, learned counsel for the appellants had contended that on a petition under Punjab Religious Premises and Land (Eviction and Rent Recovery), Act, 1997 having been filed by the defendants, the same has been accepted and ejectment of the plaintiffs from the property in question was ordered by the Collector. However writ filed against that judgment is pending in this Court where dispossession of the appellants has been stayed. This fact rather does not provide any help to the case of the appellants. Their ejectment had been ordered finding them to be in illegal possession

of the suit property. Therefore, their case that their father Udey Singh had been in possession of the property as Chaketedar and after his death, they have stepped into his shoes being Chakotedars to the Dera, therefore they have become the Chakotedars and they be declared as such; further the defendant has no right to interfere in their possession, permanent injunction relief be also granted to them suffer a big jolt.

15. The submission made by learned counsel for the respondent/defendant that once the plaintiffs have been held to be in unlawful possession of the land and directed to vacate that, they are certainly not entitled to declaration that they are Chakotedars in the suit land in equal shares or restraining the defendant from interfering in their possession over the suit property indeed has merit.

16. As regards the authorities i.e. *Sat Parkash alias Satpal Versus The Financial Commissioner, Revenue, Punjab and others, 2009(4) RCR(Civil) 357, Inder Singh Versus Financial Commissioner, Haryana and others, 2010(1) RCR(Civil) 324, Lachhman Singh and others Versus Rachna, 1991(1) RRR 514, Kurdia Versus Surta, 1992(1) RRR 319, Kanti Rani alias Kanti Devi Versus Rama Rani, 1988(2) PLR 107* and *Shyam Lal Versus Deepa Dass Chela Ram Chela Garib Dass, 2016(3) RCR(Civil) 812* referred to by learned counsel for the appellants, those do not find application to the present case due to different facts and

circumstances and the context in which such observations had been made.

17. I find that the findings given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

18. No substantial question of law or fact arises in this appeal.

19. The appeal stands dismissed with costs accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

8.12.2022

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No