

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2578-2019 (O&M)

Date of decision: March 13, 2023

Mam Chand (deceased) through legal representative Chajju Ram

....Appellant

versus

Khushi Ram and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. J.P. Sharma, Advocate for appellant.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant-defendant No.1A is in second appeal before this Court assailing learned trial Court judgment and decree dated 25.07.2016, as upheld by learned First Appellate Court vide its judgment and decree dated 29.11.2018, decreeing the suit for declaration filed by respondent No.1 herein.

3. Briefly stated, facts, as noticed by learned Courts are as below.

3.1 Father of plaintiff, namely, Jhuttha son of Ghamandi was co-owner in possession over suit land hearing KhasraNo.103, KhatoniNo.141, rectangle No.20, Killa No.7(8-0), 13/2(2-0), 14(8-0) total measuring 18 Kanals situated within revenue estate of village-Gujarmajri, Tehsil Bawal, Distt. Mohindergarh. During preparation of Jamabandi for the year 1980-81, mutation of inheritance of Jhuttha son of Ghamandi son of Heta bearing No.660 was incorporated in the names of Mam Chand etc. (defendants No.1 to 3) replacing name of father of plaintiff Jhuttha son of Bakhtawar son of Harnand, who was in fact alive on said date. Father of plaintiff died on 10.01.1987 and mutation of his inheritance was entered and sanctioned bearing No.742 in favour of plaintiff. Father of plaintiff namely Jhuttha was owner over

Khewat No.12 and Khatoni No.111 and mutation of his inheritance No.660 wrongly incorporated in the names of Mam Chand etc. (defendants No.1 to 3) *qua* the suit land by replacing same of father of plaintiff namely Jhuttha. Plaintiff approached revenue officials for correction of khasra girdawari and revenue record and for the same, an application for correction of Girdawari was filed before Assistant Collector First Grade, Bawal but on the ground of lack of jurisdiction, same was dismissed. A legal notice was served upon Gram Panchayat but no reply was filed. A legal notice under section 80 CPC was also served upon defendant No.4 and 5, on 01.08.2014, but of no use. Defendant No.1 had already died and defendant No.2 and 3 died issueless. Accordingly, only defendant No.1 is their sole surviving legal heirs and impleaded as party in the suit. Plaintiff approached revenue officials as well as defendant No.1A to accept claim of plaintiff but they finally refused, on 29.10.2014.

4. Upon notice, defendant No.1A appeared and took preliminary objections regarding jurisdiction, maintainability, want of clean hands, suppression of material facts and non-joinder of necessary parties.

4.1 On merits, averments of plaint were denied and it was averred that plaintiff had never been in possession of the property in dispute. Plaintiff filed an application for correction of Girdawari regarding disputed property before Assistant Collector, 2nd Grade, Bawal, who dismissed the same as he was not found in possession of property in dispute. Defendant No.1A was in actual physical possession of property in dispute. Also it was averred that jurisdiction of Civil Court is barred. It was averred that plaintiff did not claim relief of possession. Further prayed for dismissal of suit, denying other averments.

4.2 Replication was filed controverting averments of written statement.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether plaintiff is entitled for decree for declaration as prayed for? OPP*
2. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

3. *Whether this court has no jurisdiction to try the present suit? OPD*
4. *Whether defendants are in actual possession of suit land? OPD*
5. *Whether the suit of plaintiff is bad for nonjoinder and mis-joinder of necessary parties, if so its effect? OPD*
6. *Relief."*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issue No.1 in favour of plaintiff and issues No.2 to 5 were decided against defendants. Consequently, learned trial Court decreed suit of plaintiff-respondent No.1 and was held entitled to record his name as *gair maurusi* in column of possession to the extent of 1/6th share replacing names of defendants No.1 to 3 against suit land, vide impugned judgment and decree dated 25.07.2016.

8. Feeling aggrieved against the said judgment and decree dated 25.07.2016, appellant-defendant No.1A preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

"16. The controversy in the suit under appeal is that the mutation of inheritance of Jhutha son of Bakhtawar had been mutated in the name of LRs of Jhutha son of Ghamandi. To prove the entries as wrong. The plaintiff has proved pedigree table Ex. P-1 indicates Jhutha was son of Bakhtawar and Khushi Ram Plaintiff is son of Jhutha

17. In Jamabandi Ex. P-2 indicates Ram Chander Bishamber, Jhutha and Khandi sons of Bakhtawar son of Harnand alongwith Tek Chand son of Gurdayal son of Bakhtawar were equal gair moursion to the extent of 1/3 share in land bearing Khasra no. 20/7 (8 -0), 13/2(2-0), 14 (8-0) then in jamabandi 1965-66, Ex.P3 possession indicated of Ram Chander, Bishamber, Jhutha, Khandi and Tek Chand in equal shares to the extent of half share being co-shares same entries repeated in Jamabandi 1970-1971 Ex. P-4.

18. When Jhutha died and mutation no. 660 Ex.P-7 of his inheritance was mutated in the name of Mam Chand etc. i.e. defendants no. 1 to 3, and the same was incorporated in the Jamabandi 1980-81 Ex. P-5 wrongly. Despite this fact, in the year 1981 the father of the plaintiff Jhutha was alive. Actually, was demised on 10.01.1987. The mutation of

his inheritance was mutated no. 742 Ex. P-8. Whereas, Jhutha son of Ghamandi was owner regarding Khewat no. 12,111 as per Jamabandi 1975-1976 Ex.P-13 and Ex. P-14.

19. Thereafter, plaintiff had moved an application for correction of Khasra Girdawari which was dismissed, on account of the reason that as per Jamabandi 2006-2007. The area was regarding shamlat and therefore, the same was dismissed vide order Ex. D-3.

20. Thereafter, a legal notice Ex. P-17 and Ex. P-18 vide receipt Ex. P-19 for correction of revenue record was given to the defendants no. 4 to 6 which remained unreplied.

21. The contentions raised by the defendant 1A will not survive, as per section 158 (VI) Punjab Revenue Act 1887, the civil court has no jurisdiction to entertain this matter but as per section 9 CPC when the revenue authorities are failed to correct the entries. The civil court has the jurisdiction since as per section 45 of Punjab- Land Revenue Act and law laid down in Jaswant Kaur (Supra), the plaintiff aggrieved by the entries in the revenue record. The plaintiff is entitled to Institute the suit in civil court.

22. As regard limitation, earlier the plaintiff had requested to defendants to correct the wrong entries when they refused. The plaintiff has filed the instant suit, earlier also filed application for correction of Khasra Girdawari which was dismissed. Then legal notice was given in view of Satbir (Supra) limitation will reckon as and when title is under cloud or possession is threatened.

23. As regard non-joinder of necessary parties.

Firstly, the defendants are failed to mention which were the necessary parties however, necessary parties are those without whom no order can be passed effectively, nor the effective decree can be passed at all or in his absence, it is not possible to adjudicate matter effectively and completely on the matter in controversy between the parties. In this case the other parties shown in the Jamabandi were not going to be prejudiced and therefore, the suit of the plaintiff cannot be dismissed on this ground.

24. This case law cited by learned counsel for defendant no. 1A are not disputed but with due respect not applicable on the facts and circumstances of this case.”

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

12. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the

applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

12.1 No new arguments have been raised other than reiteration of the stand taken before the courts below.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending application(s), if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

March 13, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No