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

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Decided on : 03.10.2023

Parvesh Devi

. . . Appellant(s)

Versus

Shisha Singh (now deceased) through LRs and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Amit Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by defendant No.1 – Parvesh Devi, against the concurrent finding of decreetal of suit, filed by the plaintiff – Shisha Singh (respondent No.1 herein).

2. Brief facts, necessary for adjudication of the case are that plaintiff filed a suit for seeking a decree of permanent injunction, by submitting that he is in cultivating possession, as tenant of the agricultural land comprised in Khewat No.1733, Khatoni No.2193, Khasra No.2335/1 (4-3), 2336 min (0-14), situated at Taraf Insar, Panipat, Tehsil and District Panipat, vide jamabandi for the year 2003-2004, since the time of his forefathers.

However, it is pleaded that the actual owners of the agricultural land in dispute were ‘Parvesh Kumar and others’, who intended to forcefully dispossess the plaintiff, however, they could not succeed. Thus, in collusion with some property dealers of the area of Gohana, land in question has been fictitiously transferred in favour of defendant No.1 – Parvesh Devi at throw

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away price. On coming to know of this fact, suit for injunction was instituted by the plaintiff.

3. In the joint written statement filed by both the defendants, it is pleaded that by way of Vasika No.8414, dated 20.09.2007, said land in question was purchased by them for a sum of Rs.16,17,000/-, and subsequently, entry was made in the mutation register vide mutation No. 24061.

4. Based upon the pleadings of the parties, following issues were framed by learned Trial Court:-

- “1. Whether the plaintiff is entitled to a decree for permanent injunction, as alleged in the plaint? OPP*
- 2. Whether the suit of the plaintiff is not maintainable? OPD*
- 3. Whether the suit is bad for non-joinder of necessary party? OPD*
- 4. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 5. Relief.”*

5. Gurcharan, who is real son of plaintiff, appeared as PW1, and deposed that plaintiff Shisha Singh, is aged 95 years, and is not in a position to depose due to his extreme old age. He also deposed that plaintiff has been enjoying his cultivating possession over the suit land for the last more than 34 years as ‘tenant’. Since, his father – Shisha Singh, is unable to move more than 4/5 steps for the last 15 or 20 years, thus, land in question is being cultivated by him i.e. Gurcharan (PW1), as son of the plaintiff.

6. To rebut the case of the plaintiff, defendant examined herself as DW1, and she claimed her rights on the basis of registered sale-deed No.8414, dated 20.09.2007, by submitting that the land has been purchased by her for a sum of Rs.16,17,000/-, from the true owner of the property.

7. Learned Trial Court has taken note of the revenue record, wherein, plaintiff is recorded in possession of the disputed land as 'Gair Marusi' tenant. Therefore, considering the documentary evidence in regard to the possession, suit for injunction was decreed, and defendants were permanently restrained from dispossessing plaintiff, except, in due course of law, or interfere in the peaceful possession.

8. In the first appeal filed by the defendant before the learned Lower Appellate Court, it has been observed that the plaintiff is in cultivating possession of the disputed property since long and defendants were interfering in his possession over the same with a purpose to disposes him forcibly. Jamabandies for the year 1983-1984 to 2003-2004 (Ex.P1 to Ex.P5) clearly indicate that plaintiff is in cultivating possession of the disputed property, and it is a settled proposition of law that Jamabandies carries a presumption of truth.

On the other hand, defendants completely failed to rebut the presumption by leading any kind of evidence, cogent or otherwise. Even the entries in the Khasra Girdawari (Ex.P6) from the year 2006 to 2013-2014, show that it is the plaintiff only, who is in cultivating possession of the disputed property as 'Gair Marusi'. Entries in the Jamabandies show plaintiff as 'Gair Marusi' as 'tenant' on payment of Batai and Tihai. While, relying on the documentary evidence, learned First Appellate Court has taken into consideration the non-appearance of the plaintiff himself and standard of evidence deposed by his son Gurcharan (PW1).

9. Findings recorded in paragraph No.13 of the impugned judgment & decree dated 20.09.2019, passed by learned First Appellate Court is reproduced hereunder:-

“13. On giving due deliberation to the contentions as raised by learned counsel for both the parties and on minutely scrutinizing the evidence produced on record, I am of the considered opinion that the appeal does not deserve to be allowed. The claim of the respondent-plaintiff was that he was in cultivating possession of the disputed property since long and the appellants-defendants were interfering in his possession over the same and were trying to dispossess him forcibly from this property. Respondent-plaintiff produced on record Ex.P1 to Ex.P5 copies of jamabandis from the year 1983-1984 to 2003- 2004 which showed his name in the column of cultivation of the disputed property. It is well settled proposition of law that presumption of truth is attached to the entries in the jamabandi. Appellants-defendants failed to rebut this presumption by leading any positive and cogent evidence to the contrary. Respondent-plaintiff also produced on record Ex.P6 copy of khasra girdawari entries starting from the year 1986 to the year 2013-2014 which also showed him to be in continuing cultivating possession of the disputed property as Gair Marusi. Jamabandi entries show him as Gair Marusi/tenant on payment of batai/tihai. No doubt, respondent-plaintiff himself did not step into the witness box himself to support his claim but his son namely Gurcharan Singh appeared as PW1 and categorically deposed that since his father had become quite old, therefore, he had been cultivating the disputed

property on his behalf. This witness was well acquainted with the facts of the case. While cross-examining him, no suggestion whatsoever had been given to the effect that the disputed property did not remain in possession of the respondent-plaintiff. It was also not suggested to this witness that the possession of the disputed property had been taken over from the respondent-plaintiff at the time of execution of sale deed dated 20.09.2007 in favour of appellant-defendant no.1. Not even that, PW1 Gurcharan Singh was not even cross-examined on the point that he was cultivating the disputed property on behalf of his father and further that he had never been dispossessed by the original owners or that PW1 Gurcharan Singh was not acquainted with the facts of the case. In such circumstances, in my opinion, even without personal appearance of the respondent-plaintiff himself in the court, the other evidence oral as well as documentary produced by him is sufficient to discharge the onus which lied upon respondent-plaintiff and his absence from the witness box has paled into insignificance. PW2 Mastan Singh and PW3 Harjinder Singh fully supported the version of PW1 Gurcharan Singh. They were also cross-examined in detail but nothing could be extracted from their statements on the basis of which it could be assumed that the disputed property had been in possession of the appellant-defendant no.1 and the same had been taken over from the respondent-plaintiff at the time of execution of sale deed in favour of the appellant-

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defendant no.1. The oral as well as documentary evidence produced on record by the respondent-plaintiff fully proved him to be in cultivating possession of the disputed property as Gair Marusi/tenant. Mere recital in the sale deed Ex.DW3/A that the possession of the disputed property had been given to the appellant-defendant no.1 was not enough and the appellants-defendants were required to produce convincing and trustworthy evidence on record to prove so. However, appellants-defendants failed to produce any convincing evidence in this regard, rather on the contrary, it revealed from the testimony of DW1 Parvesh Devi that she herself had never cultivated the disputed property. She stated that her nephew was cultivating it on her behalf but failed to produce any satisfactory evidence in this regard. Her nephew DW2 Arvind stated that he had been managing the disputed property but did not give details and the manner in which he was managing the same. In such circumstances, in my opinion, learned lower court rightly held that the respondent-plaintiff was proved to be in cultivating possession of the disputed property. The cultivating possession of the respondent-plaintiff over the disputed property was proved to be an established one. Therefore, appellants-defendants could not dispossess him from the same except in due course of law. Hence, learned lower court had rightly restrained the appellants-defendants from dispossessing the respondent-plaintiff from the disputed property except in due course of

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law. While being in respectful agreement with the ratio of law as laid down in authorities cited by learned counsel for the appellants-defendants, it is held that the same are not applicable to the peculiar facts and circumstances of the present case and hence, are not relevant. Learned lower court had passed a well reasoned order which warrants no interference. Hence, findings given by learned lower court are hereby affirmed.”

10. While arguing before this Court, learned Senior counsel for the appellants (defendants) relies upon the judgment of this Court rendered in ***“Dholan Singh vs. Ilyas & Anr., 2018(4) LJR 104”***, and submits that in view of the finding recorded by the Coordinate Bench of this Court, impugned judgment and decree is liable to be set-aside.

11. I have noticed the pleadings in the present appeal as well as the pleadings raised in the cited judgment, and has come to the conclusion that the pleadings of the present appeal are entirely different to those of raised in the cited judgment.

First of all, while filing a suit for injunction, plea of dual standard was taken by the plaintiff in the cited judgment. On the one hand, plaintiff claimed that he is in possession as ‘tenant’ and at the same time, plea is taken that by way of adverse possession, he has become owner.

There was another reason for the High Court to reverse the finding given by the learned Courts below. Plaintiff, who sought the decree of injunction, admitted himself in the witness-box that possession has been taken by Dholan Singh (defendant), however, he failed to explain the time as to when said possession was taken from him (plaintiff). He even failed to

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explain the khasra numbers of the land.

Thus, there being no similarity of the facts in the cited judgment and the pleadings in the present appeal, same cannot be considered in any manner to help out the defendant (appellant herein).

11. After hearing the learned Senior counsel for the appellant (defendant) and taking note of the findings recorded by the learned Courts below in the impugned judgments & decree, this Court does not find any illegality, irregularity or perversity therein.

Besides, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

Thus, the instant appeal *sans* merits, stands **dismissed**. Accordingly, the judgments & decree passed by both the Courts below are affirmed.

(SANJAY VASHISTH)
JUDGE

October 03, 2023

J.Ram

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