

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

CR-2501-2020(O&M)

Date of decision:-15.3.2023

Rehamnawaj

...Petitioner

Versus

Gurdev Singh

...Respondent

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

Present: Mr.Sanjay Verma, Advocate
for the petitioner.

Mr.Ashok Kumar Khubbar, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Rehamnawaj had brought a suit against defendant Gurdev Singh seeking a decree for permanent injunction restraining the defendant from interfering in his actual, physical and cultivating possession over land measuring 7 kanals 6 marlas situated at village Mohmaliwala, Tehsil Chhachhrauli, District Yamuna Nagar (hereinafter referred to as the suit land). The plaintiff claimed that he has been in cultivating possession of the suit land as tenant under the defendant and other co-sharers on batai, paying batai to the defendant and other co-owners continuously. But of the late the defendant tried to take forcible possession of the suit land from the plaintiff, giving rise to a cause of action to the plaintiff to bring the suit.

2. On notice, the defendant appeared and filed written statement cum counter-claim contending that the plaintiff has never remained in

possession of suit land as tenant; it is the defendant, who is in actual physical possession of the suit land as co-sharer; the entries in the jamabandi as well as khasra girdawaries were got changed by the plaintiff in his name illegally in connivance with the revenue authorities and the defendant came to know about such fraudulent act on the part of the plaintiff after receipt of notice of the suit; the wheat crop and the trees standing on the suit land belong to the defendant. The defendant prayed for dismissal of the suit. Whereas in the counter-claim the defendant sought a declaration that entries in the khasra girdawari from kharif 2010 onwards and the column of cultivation in the jamabandi for the year 2013-14 with regard to the entries regarding the suit land in favour of plaintiff are wrong, illegal, null and void, which are liable to be corrected in the name of defendant. The defendant further sought a decree for permanent injunction restraining the plaintiff from interfering in peaceful, actual and cultivating possession of the defendant as a co-sharer.

3. The plaintiff filed reply to the counter-claim. Issues on merits were framed. After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Bilaspur gave issue-wise findings and vide judgment and decree dated 15.7.2019 suit of the plaintiff was decreed and defendant was restrained from interfering into actual, physical and cultivating possession of the plaintiff over the suit land forcibly and illegally. Whereas, counter-claim of the defendant was dismissed.

4. Feeling aggrieved, the defendant had filed an appeal before District Judge, Yamuna Nagar at Jagadhri. During the course of proceedings, the appellant/defendant filed an application under Order 41

Rule 27 read with Section 151 CPC for permission to adduce additional evidence so as to produce the following documents:

- i) Certified copy of Mutation No.278, sanctioned on 30.07.2002, regarding inheritance of Subedar Kahan Singh in favour of the applicant/appellant and others.
- ii) Certified copy of Release Deed No.1907 dated 07.10.2004 executed by Satnam Kaur, Manjeet Kaur and Harjeet Kaur daughters of Shri Kahan Singh in favour of the applicant/appellant and others along with copy of Mutation No.295 sanctioned on the basis thereof.
- iii) Certified copy of Mutation No.304 regarding inheritance of Motia Devi widow of Shri Kahan Singh, sanctioned on 30.07.2006, in favour of the applicant/appellant and others.
- iv) Certified copy of sale deed No.12 dated 04.04.2007 executed by Mahender Singh, Inder Pal Singh and Jarnail Singh sons of Shri Kahan Singh in favour of Anguri wife of Mohammad, resident of village Hadauli and Mutation No.307 sanctioned on the basis thereof.
- v) Certified copy of Mutation No.294, sanctioned on 29.10.2004, regarding inheritance of Karnail Singh son of Shri Kahan Singh.
- vi) Certified copy of sale deed No.922 dated 24.07.2007 executed by Mahender Singh, Inder Pal Singh and Jarnail Singh sons of Shri Kahan Singh in favour of Shakeela wife of Shri Reham Nawaj and Mutation No.311 sanctioned on the basis thereof.
- vii) Certified copy of jamabandi for the year 2008-2009.
- viii) Certified copy of sale deed No.3854 dated 19.10.2011 executed by

Tajender Kaur, Harpreet Kaur, Gurpreet Kaur and Jasbir Kaur, the legal heirs of Furkan Ali son of Shri Reham Nawaj and Mutation No.339 sanctioned on the basis thereof.

ix) Certified copy of Transfer Deed No.2270 dated 29.09.2014 executed by Satnam Kaur and Gurdeep Kaur daughters of Shri Kahan Singh in favour of the applicant/appellant and others as well as Mutation No.362 sanctioned on the basis thereof.

5. That application was resisted by the respondent/plaintiff but it was accepted by learned District Judge, Yamuna Nagar vide impugned order dated 28.10.2020. For ready reference, the operative part of the order is being reproduced as under:

5. *After hearing the learned counsels for the parties, as per Order 41 Rule 27 CPC, the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary in the appellate court. But if -*

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such

evidence or document to be produced, or witness to be examined.

6. *In the case in hand, Reham Nawaj, the plaintiff, has claimed tenancy under the defendant and other co-sharers on Batai regarding the land measuring 07 Kanals 06 Marlas bearing Khewat/Khatauni No. 9/12, Khasra Nos.10//3/1 and 8/2 situated in village Mohmaliwala, Tehsil Chhachhrauli, District Yamuna Nagar. It is averred in the plaint that he has been in cultivating possession of the suit land as tenant since long and the entries in the Khasra Girdawari are also in his name as tenant.*

The suit was contested by the defendant/appellant controverting the claim of the plaintiff. It has been pleaded in the written statement that the plaintiff is neither tenant nor in possession on any part of the land in suit. It is further averred that the entries in Khasra Girdawari from Kharif, 2010 and in the jamabandi, in the column of cultivation, in the name of the plaintiff regarding the land in suit are wrong, illegal, null and void and not binding upon the rights of the defendant. In counter-claim, the defendant/appellant has sought declaration to the effect that entries in Khasra Girdawari from Kharif, 2010 onwards and in the jamabandi for the year 2013-14, in the column of cultivation, in the name of the plaintiff regarding the land in suit are wrong, illegal, null and void and not binding upon the rights of the defendant and further, are liable to be corrected in his name. The defendant has also sought permanent injunction restraining the plaintiff from interfering in any manner in the peaceful actual physical and

cultivating possession of the defendant as co-sharer and from forcibly dispossessing him.

7. *Learned counsel for the applicant/appellant has drawn attention of this court to the cross-examination of Reham Nawaj PW1 to show that he has claimed tenancy over the land in suit for the last 10-12 years, when he was examined in the year 2017, regarding the land in suit under seven co-sharers, whereas the documents mentioned at serial No.(i) to (v) in the application for additional evidence go to show that number of co-sharers are, in fact, more than claimed in evidence. It is also to be ascertained that by whom the plaintiff was inducted as tenant and on what terms and conditions, since it ought to be bilateral agreement. Learned counsel for the applicant/appellant has drawn attention of this court to document mentioned at serial No.(vi) of the application, which is sale deed, to show that had the plaintiff been tenant over the land in suit, it must have been reflected therein but it is not so; therefore, this document is also relevant to decide the issue of tenancy between the parties. He has further referred to document mentioned at serial No.(vii) in the application to show that had the plaintiff been in possession of the land in suit as tenant, his name would have been reflected in the jamabandi for the year 2008-09 but it is not so, rather it is in the name of Bhim Singh. Similarly, there is no mention of tenancy in the documents mentioned at serial Nos. (viii) and (ix) i.e. copies of sale deed and transfer deed as well as mutations sanctioned on the basis thereof.*

8. *Learned counsel for the respondent/plaintiff has contended that the application in hand filed by the appellant is liable to be dismissed for the reasons that all the above referred documents were in his knowledge but failed to produce in the lower court; thus, cannot be allowed to fill up the lacunae in appeal. However, it will not be out of place to mention here that in affirmative evidence, the plaintiff had examined only Surrender Singh PW2 besides him and in fact, he had led the substantial evidence regarding tenancy over the land in suit in rebuttal and thereafter, no opportunity was afforded to the defendant/appellant to rebut the evidence. It may be true that documents sought to be produced in additional evidence may be in the knowledge of the defendant but invocation of Clause (b) of Rule 27 CPC does not depend upon the vigilance or negligence of the parties, accordingly, in the considered opinion of this Court, the documents sought to be produced by way of additional evidence are necessary to pronounce the judgment effectively.*

*It is held in **Manmohan Singh Vs. Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur & Ors. 2015(1) Civil Court Cases 101** by Hon'ble High Court of Punjab and Haryana that “when evidence is essential, there is no bar qua its reception at any stage even if the stage is of conclusion of arguments.”*

9. *With due deference, there is no dispute about the ratio of law laid down in citations relied upon by the learned counsel for the respondent/plaintiff, but are not applicable to the facts of the*

case in view of discussion made above.

10. Resultantly, I find merit in the application and the same is allowed.

6. Such order left the respondent/plaintiff aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was issued to the respondent, who put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the revision petition.

8. The First Appellate Court has specifically observed that the documents sought to be produced by way of additional evidence are necessary to pronounce the judgment effectively. In my considered view the learned District Judge, Yamuna Nagar has exercised the discretion in a judicious manner.

9. The impugned order passed by learned District Judge, Yamuna Nagar is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

10. Finding no merit in the revision petition, the same stands dismissed.

The interim order passed in this revision petition on

15.1.2021 staying further proceedings in the appeal thus comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

15.3.2023

(H.S.MADAAN)

Brij

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No