

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-720-1986 (O&M)

Reserved on: 05.03.2024

Date of decision: 14.03.2024

GURDEV SINGH (DECEASED) THROUGH LRS.

..Appellant

Versus

GURCHARAN SINGH (DECEASED) THROUGH LRS & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Punia, Sr. Advocate
with Mr. P.S. Punia, Advocate
and Ms. Harveen Kaur, Advocate
for the appellant.

Mr. Amit Jain, Sr. Advocate
with Mr. Aryaman Thakur, Advocate
and Mr. Anupam Mathur, Advocate
for respondent No.1 to 5.

ANIL KSHETARPAL, J.**1. Brief facts and introduction:-**

1.1 This regular second appeal was allowed by this Court on 14.05.2014. The plaintiffs (respondents) herein then preferred a Special Leave Petition No.30598-2014, which after the grant of leave, was re-numbered as Civil Appeal No.3756-2017. Hon'ble Supreme Court vide order dated 06.03.2017, remitted the matter back to this Court for deciding the following substantial question of law:-

“Whether the plaintiffs are entitled to a declaration of ownership of the property in dispute on the basis of sale deed dated 24 Baisakh 1995 Vikram Samvat in their favour.”

1.2 After the matter was received back, the appeal was allowed on

the ground that the suit filed by the plaintiffs for claiming ownership on the basis of having perfected their title by way of adverse possession on 20.03.2019. The matter was again taken to the Supreme Court by the defendants. In the meantime, a Larger Bench of the Supreme Court in **Ravinder Kaur Grewal and others versus Manjeet Kaur and others, 2019 (8) SCC 729**, held that such suit for claiming declaration that he has perfected his title by way of adverse possession is maintainable.

1.3 Ultimately, on 13.08.2019, the matter was again remitted back with the following order:-

*“1. Delay Condoned.
2. Leave granted.
3. In view of the decision of this Court dated 08.08.2019 rendered in Civil Appeal No.6111/2009 (Krishnamurthy S. Setlur (D) Through LRs V. O.V. Narasimha Setty (D) by LRs and others) and batch, the case is remitted to the High Court for adjudication afresh as plaintiff can take the plea of adverse possession. The impugned judgment and order of the High Court is set aside.
4. The appeal is, accordingly, disposed of.
5. Pending application(s) if any, shall stand disposed of.”*

1.4 In this regular second appeal, the successor in interest of defendant No.2 assails the correctness of the concurrent findings of fact arrived at by the Courts below while decreeing plaintiffs suit for grant of decree of declaration that they are owners in possession of land measuring 47 kanal 5 marlas.

1.5 In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

1.6 Sh. Basta Singh and Sh. Nipo Singh @ Nupa sons of Sh. Thakar Singh were co-owners to the extent of equal shares in land measuring 57 bighas 6 biswas comprised in Khewat No.68, as per jamabandi (Ex.P-1) 1986-87 B.K. (equivalent to 1929-30 A.D.) Sh. Nipo

predecessor in interest of the defendants. Sh. Pritam Singh succeeded to the rights of Sh. Jaimal Singh, whereas, Sh. Gurdeep Singh succeeded to the rights of Sh. Partap Singh. Sh. Basta Singh filed a civil suit claiming that the sale deed executed by Sh. Nipo Singh would not affect his reversionary rights in the said property. The suit was decreed on 31st 'jeth' 1988 B.K. equivalent to 1930-31. The copy of the judgment or decree has not been produced by anybody.

1.7 Subsequently, Sh. Basta Singh sold whole of the land i.e. 57 Bigas 6 Biswas vide sale deed dated 11th 'baisakh' 1995 (equivalent to 02.05.1938 (Ex.P-19) in favour of Sh. Chhajju Singh (predecessor in interest of the plaintiffs). When the purchasers went to the revenue authorities for getting the mutation sanctioned in their favour on the basis of sale deed, the same was rejected on the ground that Sh. Basta Singh did not file a suit for grant of possession. It was observed that the sale deed is valid to the extent of ($\frac{1}{2}$) half share which belonged to Sh. Basta Singh originally, however, invalid to the extent of other ($\frac{1}{2}$) half share, which was already sold to Sh. Jaimal Singh and Sh. Partap Singh.

1.8 On 23.03.1981, the successors in interest of Sh. Chhajju Singh, who had purchased the property vide sale dated 02.05.1938 (Ex.P-19), filed a suit for grant of decree of declaration to the effect that they are owners in possession of the land measuring 47 kanal and 5 marlas and that they have been in continuous possession thereof from the time of consolidation of holdings in village Reohna Neewan. It was asserted by them that the sale deed in favour of their predecessor is not traceable. However, in the revenue record, there is an entry to the effect that their possession is as an owner of the property. In the alternative, they prayed that their possession is open, continuous and hostile for more than 22 years and therefore, they have

become owners by way of adverse possession. Defendant No.1, namely Sh. Pritam Singh son of Jaimal Singh filed a written statement in the said suit admitting the claim of the plaintiffs. However, Sh. Gurdev Singh-defendant No.2, filed the written statement contesting the suit. It was pleaded that the plaintiffs are in possession as tenants over the suit land as they took the land on *batai* i.e. rent in kind, from the defendants and the plaintiffs also gave 1/3rd share upto the crop '*hari*' 1976. However, thereafter, they have not paid the rent.

1.9 On the basis of on the pleadings of the parties, the following issues were framed by the trial Court:-

- “1. Whether the plaintiffs are owners and in possession of the suit land by way of adverse possession? OPP*
- 2. Whether this court has no jurisdiction to try the suit? OPD*
- 3. Whether the suit is bad for misjoinder of necessary parties? OPD*
- 4. Relief.”*

1.10 In order to prove their case, the plaintiffs examined PW-1 Sh. Inder Singh, PW-2 Sh. Gurdev Singh, PW-3 Sh. Karnail Singh, PW-4 Sh. Gurcharan Singh and produced various documentary evidence, exhibited as Ex.P-1 to Ex.P-19.

1.11 On the other hand, the defendants examined DW-1 Sh. Tara Singh, DW-2 Sh. Ujagar Singh and DW-3 Sh. Gurdev Singh-defendant No.2.

1.12 In evidence, the plaintiffs produced the certified copies of sale deed dated 02.05.1938 (Ex.P-19) to prove the sale by Sh. Basta Singh in favour of Sh. Chhajju Singh.

1.13 Both the Courts on appreciation of evidences decreed the suit. It was held by both the Courts that the plaintiffs are owners by virtue of sale deed as well as by virtue of being in open, continuous and hostile

possession for more than 22 years. Against the aforesaid judgment, this appeal has been filed.

2. **Arguments adduced:-**

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisition record.

2.2 The learned Senior counsel representing the appellant (defendant No.2 Sh. Gurdev Singh) contends that as per the provisions of the Punjab Limitation (Custom) Act, 1920 (hereinafter referred to as the '1920 Act'), Sh. Basta Singh was required to file a suit for possession within the period of three years from the date of death of Sh. Nipo Singh. He submits that in absence of such a suit, the sale by Sh. Basta Singh with respect to share of Sh. Nipo Singh, which was sold in favour of Sh. Jaimal Singh and Sh. Partap Singh, would not vest in him, and such sale is *void ab initio*. In the alternative, he contends that the plaintiffs are recorded in possession of the suit land as tenant in the jamabandi for the year 1947-48 (Ex.P-4), whereas, in the jamabandi for the year 1953-54, Sh. Chajja Singh is recorded as co-owner on '*Batai Thihai*'. In '*khatauni istemal*', the property is shown to be in self-cultivation, whereas, in '*misalkiyat*', 47 kanal and 5 marlas land was separated and shown to be in possession of Sh. Chajja Singh as tenant.

2.3 Per contra, the learned Senior counsel representing the plaintiffs has submitted that sale deed dated 02.05.1938 (Ex.P-19), proves that the property was sold by Sh. Basta Singh in favour of Sh. Chhajju Singh. He submitted that defendant No.1 has admitted the plaintiffs case. The sale deed in favour of defendants has not been produced and only one stray entry in the jamabandi for the year 1947-48 would not be sufficient to

conclude that the plaintiffs were inducted as tenants by the defendants.

3. **Analyses and discussion:-**

3.1 This Court has considered the submission and has analysed the arguments of the learned Senior counsel representing the parties.

3.2 It may be noted here that in order to curb the filing of suits on the basis of customs to challenge the alienations, the State of Punjab enacted the following two acts:-

- i). The Punjab Custom (Power to Contest) Act, 1920. The preamble of the aforesaid act provides that it is an act to restrict the powers of descendants or collaterals to contest an alienation of immoveable property or the appointment of an heir on the ground that such alienation or appointment is contrary to custom. This act was published in the Punjab Gazette on 28.05.2020.
- ii). The Punjab limitation (Custom) Act, 1920, which provided for period of limitation for filing declaratory suits or suit for possession on the basis of such customs.

3.3 Article 2 of the schedule attached to the Punjab limitation (Custom) Act, 1920, reads as under:-

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>2. A suit for possession of ancestral immovable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom-</i>		

<i>(a) if no declaratory decree of the nature referred to in Article 1 is obtained</i>	6 years	<i>Firstly:- If the alienation is by a registered deed, the date of registration of such deed. Secondly:- If the alienation is not by a registered deed - (a) if an entry regarding the alienation in the Register of Mutation has been attested by a Revenue Office under the Punjab Land Revenue Act, 1887, the date on which the entry is attested; (b) if such entry has not been attested, the date on which the alienee takes physical possession of the whole or any part of the property alienated in pursuance of such alienation ; (c) in all other cases the date on which the alienation comes to the knowledge of the plaintiff.</i>
<i>(b) if such declaratory decree is obtained</i>	3 years	<i>The date on which the right to sue accrues or the date on which the declaratory decree is obtained, whichever is later.</i>

3.4 The learned Senior counsel representing the parties have drawn the attention of the Court to the judgment of the Supreme Court in **Tek Singh and others versus Sharan Singh and others, 1977 AIR (SC) 1699.** In this judgment, it was held that the declaratory decree passed earlier enures for the benefit of all the persons who are entitled to a share in the property of the deceased as it existed at the time of his death. In other words, it was held that suit for possession can be filed even by the person who was not a party to the previous declaratory decree.

judgment passed in **Gyasi Ram and others versus Ramji Lal and others, 1969 AIR (SC) 1144**. In this judgment, it was held that female heirs are also competent to file a suit for possession of the land alienated by their predecessor after a declaratory decree was passed in favour of their predecessor.

3.6 It may be noted here that on 23.01.1973, the State of Punjab omitted Section 6 of the Punjab Custom (Power to Contest) Act, 1920. Thus, the provision for filing suit on the basis of custom was altogether deleted.

3.7 In **Darshan Singh versus Ram Singh and another 1992, Suppl. (1) SCC 191**, the Supreme Court held that the amendment with effect from 23.01.1973, is applicable even if the matter is at the stage of suit or appeal. In **Kesar Singh and others Vs. Sadhu Singh (1996) 7 SCC 711**, the Court held that such amendment also applies at the stage of execution petitions. It was further held that challenge to the alienation on the basis of Hindu law will not be affected by 1973 amendment.

3.8. In **Shakuntala Devi versus Kamla and others (2005) 5 SCC 390**, the Supreme Court answered the following question:-

- i. Whether the finding of the High Court in the impugned judgment that the earlier decrees obtained by the appellant being declaratory in nature, would not operate as *res judicata* in favour of the appellant and would not enable her to obtain possession through the Court of law by filing a suit for possession is correct in law or not?

3.9 Ultimately, the Supreme Court while answering the aforesaid issue, held that the declarative decree, if obtained without noticing the law, is liable to be defeated and it would not operate as *res judicata*.

3.10 However, these judgments are not applicable to the facts of the present case. It may be noted here that the plaintiffs possession is admitted by defendant No.1 as well as the appellant (defendant No.2). In such circumstances, the question is “whether it was incumbent on Sh. Basta Singh to file a suit for possession?” The attention of the Court has not been drawn by the learned Senior counsel representing the appellant to any specific provision, which mandates filing of suit for possession after the declaratory decree has been obtained particularly when the holder of declaratory decree is already in the possession of the suit property. What has been provided in the Punjab Custom (Power to Contest) Act, 1920, is that a suit for possession can be filed within a period of three years from the date on which the right to sue accrues or the date on which the declaratory decree is obtained, whichever is later. However, it is not provided that even if the plaintiffs are in possession, still, the suit for possession is mandatory.

3.11 Now, it is the case of the defendant-appellant that the plaintiffs were inducted as tenants. The plaintiffs have produced jamabandis from the year 1958-59 till 1981, i.e. the filing of the suit. In the jamabandi for the year 1958-59, the entry in the remarks column is ‘*Bashra Malkan Bila Lagan*’. It means that the plaintiffs claim themselves to be in possession as owners, though they are not owners. In the next jamabandi for the year 1961-62, the entry in the remarks column is ‘*Bashra Malkan Bawaja Beh*’, which means that the plaintiffs are in possession because of the sale deed. ‘*Khasra Girdawari*’ from 1967-68 till 1982 proves that the plaintiffs are in possession of the property. The entire error has occurred due to the fact that revenue the authorities have not sanctioned the mutation on the ground that Sh. Basta Singh did not file a suit.

3.12. It is evident that the defendants are basing their claim on the

basis of one entry in the jambandi for the year 1947-48. The tenancy is either a creation of bilateral contract or statute. Defendant No.2 has although claimed that the plaintiffs were inducted in possession as a tenant on payment of 1/3rd '*batai*', however, they have failed to prove the same. Apart from the oral statement, the defendants have failed to substantiate the aforesaid plea. Although the defendants have claimed that they have been paid rent in kind upto the crop of '*hari*' 1976, however, no cogent evidence to prove that fact has been led. Both the Courts held that the defendants have failed to lead sufficient evidence.

3.13. The stray entry in the jamabandi for the year 1947-48 shows that Sh. Chhajju Singh was in possession of ($\frac{1}{2}$) half share on 1/3rd '*batai*' (1/3rd share in kind). '*Khatauni Ishtemal*' Ex.P-10 does not prove that the plaintiffs are in possession as tenants. The argument of the learned counsel is based on the expression '*gair marusian*' recorded in the cultivation column, however, it is well settled that the expression '*gair marusian*' in literal terms mean that the person in possession is not an occupancy tenant. Unless the entry of '*gair marusian*' is corroborated by an entry in column No.9 showing the rate of rent, the tenancy is not proved. Moreover, the revenue record carries rebuttable presumption. In this case, it is evident that the plaintiffs entered into possession of the property pursuant to the sale deed executed in their favour by Sh. Basta Singh on 02.05.1938. In other words, it is safe to assume that Sh. Basta Singh was in possession in the year 1938. This fact assumes significance because Sh. Pritam Singh (defendant No.1) son of Sh. Jaimal Singh admits the plaintiffs case, though he is defendant-appellant's cousin. Hence, this Court does not find that sufficient evidence has been led to prove that the plaintiffs were inducted as tenants.

4. Decision:-

4.1 Keeping in view aforesaid discussion, the result is inevitable. Hence, the question of law as directed by the Supreme Court is answered in favour of the plaintiffs (respondents). They are declared owners of the property on the basis of sale deed dated 24 Baisakh 1995 Vikram Samvat, which is equivalent to 02.05.1938.

4.2 With these observations, the appeal is dismissed.

4.3 All the pending miscellaneous applications, if any, are also disposed of.

March 14th, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No