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

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Date of Decision: 25.11.2024

KUNDAN SINGH

..... APPELLANT

VERSUS

KEHAR SINGH

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Som Nath Saini, Advocate
for the appellant.

Mr. Adarsh Jain, Advocate
for the respondent.

TRIBHUVAN DAHIYA, J. (ORAL)

This is plaintiff's second appeal for setting aside the judgment, dated 26.02.1988, passed by the trial Court and judgment and decree, dated 14.12.1989, passed by the lower appellate Court. The plaintiff filed a suit for declaration that he was in cultivating possession of the suit land measuring 13 *kanal* 16 *marlas* comprised in *khasra* nos. 15/7(8-0), 14/1(5-16), jointly with the defendant for the last twenty five years as tenant at will on 1/3rd *batai* under the land owners situated at village Mohamadpur Sottar, Tehsil Ratia, District Hisar; and that *jamabandi* entries in favour of the defendant are wrong, against law and fact and not binding on the rights of the plaintiff



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and same are liable to be corrected. The suit was dismissed by the trial Court, and appeal against the same was also dismissed by the lower appellate Court.

2. Brief facts of the case are, the plaintiff/appellant and the defendant/respondent are real brothers. The plaintiff claimed to be in possession of the suit land jointly with the defendant for the last twenty-five years, he had also claimed that at the time of institution of suit the possession was joint and the *kharif* crop for 1985 was sown jointly by the parties. However, the defendant wants to dispossess the plaintiff of the suit land on the basis of entries in *jamabandi* for the year 1979-1980, which are wrong and not binding on the plaintiff's rights as the same are manipulated.

2.1. The defendant contested the suit by pleading that he had exclusive cultivating possession of the suit land for the last twenty years. Prior thereto possession of parties was joint, but it was given up by the plaintiff after taking compensation. Revenue entries in favour of the defendant are correct and the suit is accordingly liable to be dismissed.

2.2. From pleadings of the parties the following issues were framed by the trial Court;

1. Whether the plaintiff is joint tenant with the defendant over the suit property as alleged? OPP
2. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
3. Whether the suit is against law, facts and is liable to be dismissed? OPD

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4. Whether the suit is not maintainable in the present form?

OPD

5. Whether the civil court has no jurisdiction to entertain the suit? OPD

6. Whether the suit is false and vexatious? OPD

6-A. Whether the suit is time barred? OPD

7. Relief.

2.3 The trial Court decided issue no. 1 against the plaintiff holding that he was not joint tenant along with the defendant over the suit land. Issue no. 2 was decided in favour of the defendant, holding that the plaintiff was estopped from filing this suit by his own act and conduct. Issue no. 3 was however decided against the defendant, holding that the suit was not against law. Issue no. 4 was decided against the plaintiff, holding that the suit was not maintainable in the present form. Issues no. 5 and 6 were decided against the defendant, holding that the Civil Court had jurisdiction to decide this suit and that the suit was not false and vexatious. Issue no. 6-A was decided in favour of the plaintiff, holding that the suit was not barred by time. As a result of the findings on these issues, the suit was dismissed with no order as to the costs. Feeling aggrieved, the plaintiff filed an appeal wherein the lower appellate Court confirmed the findings recorded by the trial Court, and dismissed the appeal vide the impugned judgment.

3. Learned counsel for the appellant-plaintiff has challenged the findings of the Courts below only on issue no.1 by contending that revenue



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entries of the land in question were wrongly changed without any order of the competent authority or making entries in the *roznamcha*. No notice was given to the plaintiff before effecting the change. Therefore, the same are illegal being contrary to law. Besides, once the entries are under challenge in the suit, the same could not have been relied upon by the Courts in non-suiting the plaintiff.

4. Learned counsel for the respondent-defendant, on the contrary, has contended that for more than fifteen years prior to filing the suit the parties had been separately cultivating their share. Their properties had been partitioned, and both of them had been living in separate homes with separate kitchens. There is no evidence on record that the plaintiff was in joint possession with the defendant over these years. The revenue entries correctly reflect the facts, and have been rightly entered. Both the Courts below have correctly appreciated the evidence on record in dismissing the suit as well as the appeal.

5. Heard.

6. It has come in the evidence that the parties are separate in residence, mess and cultivation for the last fifteen years. The plaintiff could not mention the name of owners of the land in dispute, nor could he produce any receipts regarding the payment of *batai* to the owners. Besides, one of the owners/ DW2 has testified that defendant is in cultivating possession of the land in dispute as their tenant, and he takes *batai* of land from him. He has also proved the receipts issued to that effect, Ex.D.1 to Ex.D.14, which



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relate to the period from March, 1973 to June, 1986. The *Halka Patwari*/ PW2, who proved the *jamabandi* and *khasra girdawris* Ex.P.1 to Ex.P.9, has also stated in cross-examination that during spot inspections for the last about six years, it never come to his notice that the *girdawri* had been conducted wrongly, nor did the plaintiff complain about it ever. In the light of this evidence, there was no reason to disbelieve the correctness of revenue entries, and the plaintiff had accordingly failed to prove that he was in cultivating possession of the land in dispute as tenant along with the defendant.

7. The lower appellate Court also opined thus; its findings are as follows:

8. ... Plaintiff Kundan Singh as PW1 has stated that he and Kehar Singh are cultivating the suit land as tenants for the last 25 years and that the entries in the *jamabandis* and *khasra girdawari* were changed by the Patwari without issuing any notice to him and he came to know about these wrong entries in Hari, 1987. In cross-examination, this witness has stated that he and the defendants are separate in residence, mess and cultivation for the last 15 years. Then he could not give the names of the owners of the land in dispute when question regarding this fact was put to him in the cross examination. Then it is stated by him that he has got receipts regarding payment of *batai* to the owners. However, no such receipt has been produced by him pertaining to the period in question. Now if the plaintiff was joint tenant over the land in dispute and he regularly pays *batai* to the owners of the land, then it is not possible that he (plaintiff) would not know the names of the owners of the land. As stated above, the case of the defendant



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is that the plaintiff has relinquished his share in the disputed land as tenant in his favour about 20-22 years back. There seems to be truth in this assertion. As stated above, the plaintiff has admitted that he and the defendant are separate in residence, mess and cultivation for the last 15 years. In fact, the entries in the revenue record in favour of the defendant alone came into existence in the year 1969-70. From this circumstance that the partition between the parties took place about 15-16 years back and the entries in the revenue record also came into existence in the name of the defendant alone at about the same period, the possibility cannot be ruled out that at the time of partition whole of that disputed land came into possession of the defendant by way of mutual agreement. Then there is statement of Ram Chander DW2 who is one of the owners of the land in dispute. It is stated by him that now Kehar Singh is cultivating the land in dispute on batai as their tenant, that he takes batai of the land from defendant Kehar Singh and that receipts Ex. D1 to Ex. D14 were issued by him. In cross examination also, this witness has stated that he is seeing the defendant alone cultivating the land in dispute. Now if we pursue receipts Ex. D1 to Ex. D14, then it would be seen that they relate to the period from March, 1973 to June, 1986 and in all these receipts only the name of Kehar Singh finds mentioned. Now if alongwith Kehar Singh, plaintiff Kundan Singh was also cultivating the land in dispute as tenant, then in the ordinary course, his name would also have been written in these receipts. Then it is also not believable that throughout this long period, only Kehar Singh would give batai to the owners and the plaintiff never came into picture at the time of payment of batai. Then this Ram Chander is quite dis-interested person and, therefore, there are no reasons to disbelieve his statement. It may be stated here that in cross examination, Ram Chander



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DW-2 has admitted issuance of receipt Ex. P.12. However, this receipt would not help the plaintiff in any manner because therein, his name is not written. ...However, in the present case, as discussed above, the circumstances go to show that these entries are correct. Simply because no notice was given to the plaintiff at the time of effecting change in the entries, later entries cannot be ignored. I, therefore, reject this argument of the learned counsel for the plaintiff.

8. The findings are well reasoned and have been recorded by correctly appreciating the evidence on record. The same do not suffer from any error of law, nor does any substantial question of law arise for consideration.

9. In view thereof, there is no merit in the appeal and it stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

25.11.2024
Seema

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No