

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

137

RSA-1077-1993 (O&M)
Date of decision: 18.03.2024

NATHA SINGH THROUGH LRSAppellant

VERSUS

RAM SINGH THROUGH LRSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Ms. Sonia Mittal, Advocate for
Mr. R.P.S. Cheema, Advocate
for the Appellant
(Through Vide Conference).

Mr. Pawan Bansal, Advocate
for the respondent.

VINOD S. BHARDWAJ, J. (Oral)

CM-2662-C-2024

The present application has been filed under Order 22 Rule 4 read with Section 151 of the Code of Civil Procedure for bringing on record the legal representatives of deceased Ram Singh-plaintiff-respondent.

Application is allowed as prayed for subject to all just exceptions and legal heirs as mentioned in para 3 of the application are impleaded as party, however, the same shall be for the purpose of pursuing the present appeal only and without prejudice to the rights of any third person.

Amended Memo of parties is taken on record.

Registry is directed to tag the same at appropriate place.

RSA-1077-1993

1. Defendant is in an appeal against the judgment passed by the Court of Senior Sub Judge, Bathinda in Civil Suit No. 441 of 21.07.1987 decided vide judgment and decree dated 18.03.1989 as well as the subsequent dismissal of the appeal by the Additional District Judge, Bathinda in Civil Appeal No. 99 of 27.04.1989 vide judgment and decree dated 28.07.1992.

2. Briefly summarized facts of the case are that respondent-plaintiff had instituted the Civil Suit for permanent injunction for restraining the appellant-defendant from taking forcible possession of land measuring 24 kanals comprising Khasra Nos. as detailed in the head note of the plaint and situated within the revenue limits of Village Seikhu.

3. The respondent-plaintiff claimed to be in possession of the suit land as a 'gair marusi tenant' while the appellant-defendant was the owner of the suit land which was mortgaged, without possession, in favour of Banta Singh and Santa Singh. The mortgagees made an attempt at seeking forcible possession of the suit land, however, a Civil Suit was filed by the respondent-plaintiff against the mortgagees, which was decreed on 19.03.1982. Thereafter, the owner/appellant-defendant initiated attempts at seeking forcible possession of the land from the respondent-plaintiff whereupon the present Civil Suit No. 441 of 21.07.1987 was instituted.

4. A Written statement had been filed by the appellant-defendant raising various objections including that the respondent-plaintiff had no locus standi to file the said suit alongwith objection as regards the

maintainability of the suit and also on account of non-joinder of the necessary parties. On merits, it was denied that the respondent-plaintiff was in possession over the suit land and the appellant-defendant claimed to be in a settled and exclusive possession of the suit land.

5. On the completion of pleadings, the following issues were framed.

- 1) *Whether the plaintiff is in possession of the disputed land? OPP.*
- 2) *Whether plaintiff is entitled to injunction prayed for? OPP*
- 3) *Whether plaintiff has no locus standi to file the suit? OPD*
- 4) *Whether the suit in the present form is not maintainable? OPD*
- 5) *Whether suit is bad for non-joinder of necessary parties? OPD*
- 6) *Relief.*

6. The respondent-plaintiff appeared as witness and corroborated his possession from the revenue record. Ex.P4 was the Copy of Jamabandi for the year 1982-83 wherein he was recorded to be in possession of the land as gair marusi. The said entry was also carried forward in the Khasra girdawari for the crops from Kharif 83 to Rabi 87. The possession of land in favour of the respondent-plaintiff was thus reflected in the revenue record. The judgment and decree in the Civil Suit filed by the respondent-plaintiff against the mortgagees Banta Singh and Santa Singh were also proved on record as Ex. P1 and the decree was Ex. P2.

7. It was also recorded by the Senior Sub Judge, Bathinda that no evidence was however led by the appellant-defendant to rebut the evidence

adduced by the respondent-plaintiff other than his oral testimony claiming possession of the suit land. It was noted that the appellant-defendant had applied for correction of the Khasra Girdawari for the crop Rabi 87 and Kharif 87, but the same was dismissed by the Assistant Collector, 2nd Grade on 17.05.1988. He had also adduced copy of FIR (Ex. D1) dated 13.06.1987 lodged against him by the respondent-plaintiff under Section 440/447 IPC pertaining to criminal trespass over the land, however, it was noted by the Court that even in the said FIR it was not recorded that possession had been taken away from respondent-plaintiff. A trespass cannot *ipso facto* be deemed as having been divested of possession. The appellant-defendant was thus found deficient in adducing evidence on the basis whereof, he could be deemed to be in possession of the suit land even though his title was not a subject matter of dispute. It was recorded by the Senior Sub Judge, Bathinda that the possession of the suit land, under such circumstances, can only be taken by appellant-defendant by following due process of law since the respondent-plaintiff successfully discharged his burden as being in possession of land as 'gair marusi'.

8. Aggrieved of the aforesaid judgment and decree, an appeal was filed before the District Judge, Bathinda. Upon consideration of the arguments advanced on behalf of the parties, the learned Additional District Judge, Bathinda dismissed the said appeal vide his judgment dated 28.07.1992. Hence the present appeal.

9. Learned counsel appearing on behalf of the appellant-defendant has vehemently argued that the trial Court as well as the Appellate Court have failed to appreciate that there was no evidence on the basis whereof the respondent-plaintiff could be established to have been inducted as a tenant.

The revenue record relied upon by the respondent-plaintiff did not show any entry as regards the rent that was being paid by the respondent-plaintiff and in the absence of any rent payable, his status as a tenant could not have been accepted by the trial Court as well as the First Appellate Court. It is thus contended that in the absence of the pleading and evidence to reflect the status of the respondent-plaintiff as a tenant, the Courts proceeded on a wrong premise and hence erred in law and fact in decreeing the suit and thereafter in dismissing the appeal preferred by the appellant-defendant.

10. Counsel for the respondent-plaintiff on the other hand has contended that the revenue record established the petitioner to be in possession as a tenant 'gain marusi'. There was no issue framed as to whether the respondent-plaintiff had been inducted as a tenant or not or as to whether the respondent-plaintiff has any protection under the Punjab Tenancy Act or not. The appellant-defendant never raised any objection to the issues framed or sought any framing of an additional issue. The revenue record thus cannot be impeached on such a belated and afterthought argument. It is submitted that there is a presumption of truth attached to the revenue record and an issue as to whether a person had been inducted as a tenant or not and as regards veracity of the revenue record is even though a rebuttable presumption, however, the said burden was to be discharged by the appellant-defendant. Other than a mere self serving statement, no other evidence was led by the appellant-defendant before the Court. Besides, proceedings were also initiated by the appellant-defendant for correction in the Khasra Girdawari but the same were also dismissed by the Assistant Collector and as such, the veracity of the Revenue record cannot now be disputed at this stage. Once the possession of the respondent-plaintiff has

been established on the land and there being no evidence on record to suggest that the appellant-defendant had an established exclusive possession of the land, the injunction has been rightly granted. It is further submitted that appellant-defendant has however not been restrained from initiating proceedings for seeking recovery of the said suit property and/or seeking a correction/ejectment of the respondent-plaintiff as per law.

11. I have learned counsel appearing on behalf of the respective parties and have gone through the judgments as well as the record.

12. Section 44 of the Punjab Land Revenue Act, 1887 attaches a presumption to the record that has been prepared by the revenue authorities in due course. Such a presumption is however not absolute and is rebuttable. The burden however lay on the appellant-defendant to rebut the presumption but no such evidence had been led by him. It is specifically recorded by the Courts below that the Jamabandis as well as the Khasra Girdawaris from Kharif 83 to Rabi 87 showed continuous occupation and possession of the respondent-plaintiff over the suit land. A specific, finding on consideration of the evidence, was recorded by the Courts to the effect that the respondent-plaintiff successfully established his possession over the suit land for nearly 14-15 years and that a judgment and decree had already been passed in favour of the respondent-plaintiff by the Civil Court in an attempt made by Banta Singh and Santa Singh-mortgagees of the land to take forcible possession. The Civil Court accepted the actual physical possession of the respondent-plaintiff in the said suit as well and a judgment and decree was passed against the mortgagees, restraining them from interfering in possession of the respondent-plaintiff.

13. Further, even as per the plaint, the respondent-plaintiff had specifically claimed to be in continuous possession of the land since 1979 and in his capacity as a *gair marusi* tenant. While responding to the above said specific plea, the appellant-defendant claimed his ownership but denied the actual possession of the respondent-plaintiff of the suit land, however, the pleading is not supported by any document. To the contrary the document Ex. P5 i.e. the order passed by the Assistant Collector, 2nd Grade has also been perused. In the said proceedings as well, the appellant-defendant had sought correction of the entry made in favour of the respondent-plaintiff in the Khasra Girdawari during the period Kharif 1987 to Rabi 1987. A finding was however recorded by the Assistant Collector that the parties were granted sufficient opportunity to lead evidence to establish their actual physical possession and that a report was also obtained from the Halqa Patwari as recorded in his Roznamcha bearing No. 300 dated 24.04.1987 in which Harchand Singh Sarpanch, Ajaib Singh Nambardar, Gurbachan Singh Nambardar got their statements recorded to the effect that the respondent-plaintiff was in actual physical possession of the land. The revenue authorities also visited the village for verification of the said fact, however, the appellant-defendant did not appear before them on 11.05.1988 and that in jalsa-sare-aam, the mutation/entry in the Khasra Girdawari in favour of respondent-plaintiff was reported to be correctly recorded. The said order passed by the Assistant Collector on 17.05.1988 has not been set aside and had attained finality as on the date when the instant proceedings had been brought before the Civil Court.

14. Insofar as the contention of the appellant-defendant that the respondent-plaintiff was not paying any rent is concerned, the said aspect is

required to be agitated by the appellant-defendant before a competent authority under the Punjab Tenancy Act for seeking possession and to contend that the respondent-plaintiff cannot be deemed to be a tenant and that is not entitled to the protection under the Punjab Tenancy clause. No such proceedings have seemingly been initiated by appellant-defendant. Besides, no such issue has been framed in the present case, hence, there is no occasion for this Court to rule on any such issue in favour of the appellant-defendant. Consequently, the legality of the entry made cannot be examined at this juncture by this Court in the absence of any issue framed or evidence led by the respective parties.

15. The possession of the respondent-plaintiff having been consistently upheld and affirmed by both the Courts as well as also by the Revenue Court, so there is no basis for this Court to upset the said finding of fact concurrently and repeatedly recorded in favour of the respondent-plaintiff. There is no illegality or perversity in the judgment passed by the Courts and no questions of law arise for determination.

16. The present appeal is accordingly dismissed at this stage. The judgment and decree dated 18.03.1989 passed by the Senior Sub Judge, Bathinda in Civil Suit No. 441 of 1987 as upheld by Additional District & Sessions Judge, Bathinda, in Civil Appeal No. 99 of 27.04.1989 vide judgment and decree dated 28.07.1992 is affirmed.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 18, 2024
Vishal Sharma

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