



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

123

RSA-616-1992 (O &M)
Date of decision: 26.04.2024

DALEL

.....Appellant

VERSUS

SAFED KHAN

.....Respondent

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

Present: - Mr. Sachin Mittal, Advocate with
Mr. Parth Sharma, Advocate
for the Appellant.

Mr. Prateek Mahajan, Advocate and
Mr. Daanish Mahajan, Advocate
the respondent.

VINOD S. BHARDWAJ, J. (Oral)

1. The appellant-plaintiff is in regular second appeal against the judgment and decree dated 17.10.1989 passed in Civil Suit No. 135 of 27.02.1987 by Sub Judge, First Class, Palwal as well as the subsequent dismissal of the Civil Appeal No. 41 of 1989 by the Additional District Judge, Faridabad vide judgment and decree dated 10.01.1992.

2. Briefly summarized the facts of the present case are that the appellant-plaintiff instituted a suit for declaration and permanent injunction as a consequential relief claiming himself to be in possession of agricultural land bearing Khewat No. /Khatoni No. 169/188, rect. No. 42 killa No.

12/2(7-4) situated within the revenue estate of village Alimeo, Tehsil

Hathin, District Faridabad. It was averred that appellant-plaintiff had assumed possession of the suit land from Kharif 1973 by force and that he had become owner by way of an adverse possession since his possession had been hostile, open, continuous, exclusive and to the knowledge of the respondent-defendants as well as their father Bhure Khan. Reliance was placed on the column No. 9 of the Jamabandi prepared in the year 1975-76, 1979-80 and 1981-82 to substantiate that no rent was being paid for the said land and to assert that the possession over the land was hostile. It was also averred that deceased Bhure Khan continued to reflect as owner of the suit property in the revenue record prepared by the revenue officials in a wrongful manner, which was incorrect and needed to be rectified.

3. It was submitted that an ejectment suit was earlier filed by Bhure Khan on 23.06.1979 in the Court of Assistant Collector, First Grade, Palwal, claiming the appellant-plaintiff to be as tenant under him and in cultivation of the suit property at the rate of 1/3rd batai which was decided in favour of Bhure Khan on 05.02.1987 and that during the pendency of the suit, the respondent-defendant got entry No.9 of Jamabandi changed showing the appellant-plaintiff to be in cultivating possession of the suit land at the rate of 1/2 batai. A declaration was also sought that Bhure Khan was not entitled to get the entries changed without taking recourse to the Court of law as per procedure envisaged in Section 45 of the Punjab Land Revenue Act, 1887 and that no notice of such change was given to the appellant-plaintiff and that the proper procedure had not been followed. It was averred that on the basis of the ejectment order dated 05.02.1987, the respondent-defendant threatened to dispossess the appellant-plaintiff from the land holding, in an illegal and forcible manner. Consequently, the above said suit

for declaration and permanent injunction as a consequential relief was filed before the Sub Judge, First Class, Palwal.

4. The respondent-defendants entered appearance and had filed a written statement taking a preliminary objections as to estoppel, jurisdiction and cause of action. It was stated that Karim Khan @ Karim Bux-father of the appellant-plaintiff started cultivation of the suit land as a tenant on payment of $\frac{1}{2}$ Batai under the Bhure Khan-deceased father of the defendant-respondents and entries in the name of aforesaid Karim Khan @ Karim Bux continued to reflect in the Jamabandis for the year 1960 as well as 1965-66. It was further averred that on death of Karim Khan & Karim Bux, the name of appellant-plaintiff was entered as cultivator in the Kharif 1973 and the rate of rent was kept as “Badastoor”. Hence, the appellant-plaintiff inherited the tenancy rights of his father regarding the suit land. It was averred that due to an inadvertence, the column of rent was left blank in the Jamabandi pertaining to the year 1970-71 by the Revenue Department and there was no change in the Girdawari for the crop Kharif 70 and Rabi 71 as well as the Jamabandi for the year 1970-71. It was thus submitted that the absence of the rent entry in the subsequent record was hence inadvertent and that the said error was corrected through a fard badar No.1 dated 13.09.1982 (Ex.D4) by the revenue authorities who were competent to correct the same. It was averred that law prohibits the appellant-plaintiff from denying the relationship of landlord and tenant regarding the suit land and the appellant-plaintiff was duty bound to surrender possession of the suit land first to the landlord, under the rule of forfeiture, before he could set up a claim on the basis of adverse possession. It was also averred that the appellant-plaintiff was ejected vide judgment and decree dated 05.02.1987 (Ex. D1 and D2

respectively) by the Court of Assistant Collector, First Grade, Palwal, Faridabad.

5. In the reply on merits, it was specifically stated that the appellant-plaintiff is in possession of the suit land as tenant and a judgment and decree of ejectment has already been passed against the appellant-plaintiff. It was specifically asserted that Karim Khan @ Karim Bux was in cultivating possession of the suit land as a tenant on ½ batai of the suit land and that the name of the plaintiff was entered after the death of his father and thus, inherited the tenancy rights of his father regarding the suit land. He would thus step into the shoes of his father and does not acquire any independent right of his own.

6. A replication was filed by the appellant-plaintiff to the written statement wherein, the averments as regards the father being a tenant under Bhure Khan and the appellant-plaintiff having inherited the tenancy have not been specifically denied.

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

*“1. Whether the plaintiff is owner in possession of suit land?
OPP*

2. Whether order dated 05.02.87 passed by Assistant Collector, 1st Grade, Palwal is null and void as alleged? OPP

3. Whether the Civil Court has no jurisdiction to try this Suit? OPD

4. Whether there is no cause of action? OPD

5. Whether the defendants are entitled to special costs under Section 35-A? OPD

6. Relief.

8. Parties led their respective evidence and upon consideration of the said evidence, the Sub Judge, First Class, Palwal came to a conclusion that as per the Jamabandi pertaining to the year 1960 (Ex. P4) and the Jamabandi pertaining to the year 1965-66 (Ex. D7) father of the appellant-plaintiff was recorded as tenant on payment of batai. It was also recorded that in the cross-examination of the appellant-plaintiff Dalel, it was admitted by him that his father use to cultivate the suit land as tenant. It was observed that omission to mention rent in the revenue record occurred for the first time in the jamabandi for the year 1970-71 and that the said jamabandi being based on the previous jamabandi for the year 1965-66, in the absence of any special circumstances or any deed/order/document justifying the change in the relationship of the parties, such arbitrary change could not be taken into consideration for giving rise to any effective right in favour of the plaintiff-appellant.

9. It was also observed that for carrying out any change in the Jamabandi, a notice was required to be issued to the person who was likely to be adversely affected by such change of the entries, however, no such notice was ever served upon the respondents/defendants before the change in revenue record. As the proper procedure for carrying out the change had not been followed, hence, in view of the law laid down through precedent judgments, it was held that if the later Jamabandi is found to be inconsistent with the previous revenue record and there is no valid explanation with respect to the same, no reliance can be based on such changed jamabandi. The contention of the appellant-plaintiff that the fard badar could not be taken into consideration to the prejudice of his rights was also noticed and it was held unsustainable for the reason of the entry having been incorrectly

recorded in his favour and on also noticing the statement of Bhure Khan (Ex.P6 and Ex. P-7). It was also recorded by the trial Court that in the cross-examination, the appellant-plaintiff admitted about his father cultivating the suit land as a tenant. Reliance was placed on Section 109 of the Evidence Act, 1872 which stipulates that the burden of proving that there was a cessation of a prior relationship amongst the parties, lies on the party claiming such cessation. Thus, the burden lay upon the appellant-plaintiff to establish that their relationship of tenant and landlord had come to an end and that his possession had become open and hostile and that in the absence of any such pleading, no benefit can be given to him. It was also recorded that the appellant-plaintiff has inherited the possessory right of the suit land and therefore he continues to be a tenant and is not entitled in law to deny the relationship of the land lord. The suit was thus dismissed and it was observed that the appellant-plaintiff is not owner in possession of the suit land by way of an adverse possession and the order of ejectment dated 05.02.1987 (Ex.D1) was upheld.

10. Aggrieved thereof, the appellant-plaintiff preferred an appeal before the District Judge, Palwal. Vide judgment and decree dated 10.01.1992, the said Civil Appeal No. 41 of 1989 was dismissed by the Additional District Judge, Palwal. Hence, the present Regular Second Appeal.

11. Learned counsel appearing on behalf of the appellant has raised the following arguments:-

i) It is contended that the Courts below have referred to an admission made by appellant-plaintiff while appearing as PW-1 about the status of his father as a tenant and he having inherited the same which such

admission is not borne out from a reading of the examination-in-chief as well as the cross-examination. Hence, the judgments passed by both the Courts are based on misreading of an evidence.

ii) Learned counsel further contends that by virtue of Section 45 of the Punjab Land Revenue Act, 1887 the burden lies on the respondent-defendant to file an appropriate suit under the Specific Relief Act, 1963, if he was aggrieved of the change of entry in the Jamabandi and hence, he cannot rely on the judgment of eviction and correction of record by revenue authorities.

iii) An argument is also advanced that the Ex. P-6 and P-7 are copies of statements of Bhure Khan and Safed Khan which reflects that possession of appellant-plaintiff was forcible. It is thus submitted that the above said documents clearly established the claim of the appellant-plaintiff to be in adverse possession of the land and that the subsequent order passed in February, 1987 would have no bearing on the rights of the appellant-plaintiff.

12. Responding to the above, counsel for the respondent-defendant has submitted that the position in law is well established to the effect that if any change is to be carried out in the revenue record, the same can only be undertaken after due notice to the parties. The change in the revenue entry in the year 1973 was done without following the due procedure. He contends that a Fard Badar (Ex. D4) was duly carried out by the revenue authorities in 1982 and that the Assistant Collector, First Grade directed correction of the revenue record and declared that the appellant-plaintiff was a tenant under the respondent-defendants on batai $\frac{1}{2}$. It is submitted that the appellant-plaintiff had preferred an appeal before the Collector aggrieved of the said

judgment and decree Ex. D1 and D2 respectively. The said appeal was also dismissed by the Collector, vide Order Ex. D3. Hence, the revenue record relied upon by the appellant-plaintiff ceases to have any force in law not only by dint of the precedent judgments of this Court but also on the strength of the subsequent judgment and decree passed by the revenue authorities as a result whereof, the earlier entries have been annulled and the relationship between the respondent-defendant and the appellant-plaintiff as landlord and tenant has been established.

13. In response to the contention of the appellant that there is no admission of relationship in the statement of PW-1 Dalel Khan in the cross-examination, he refers to the specific cross-examination which reads thus:-

“Yeh theek hai ki chak bandi se pehle purane numero ke mere pita bator jota kasht karte the mujhe pata na hai ki zamin mutnaja purane number ke badle mein mili hai. Mere pita ne kabhi jameen ka kabja na chhoda. Mere pita ke baad jot mujhe virasat me aai”

14. He thus contends that the above said statement, on a plain reading establishes that the father was a tenant under the respondent-defendants and that the appellant-plaintiff had inherited the same from his father. Hence, the appellant steps into the shoes of his father and cannot claim any independent individual right, unless he could have established that the possession in question was surrendered either by the father of the appellant-plaintiff or by himself and that he had thereafter taken forcible possession of the said property. The continuity of possession and admission of having succeeded possession of the land from his father entails continuity of the relationship. Hence, the admission was rightly recorded.

15. While responding to the issues as to whether a separate suit was required to be filed by the respondent-defendant in view of Section 45 of the Punjab Land Revenue Act, 1987, learned counsel for the respondents-defendants contends that the said provision would not be applicable in the present case since the right of a party in question was never affected and that only the entry was recorded in the revenue record due to inadvertence for which a fard badar was carried out by the revenue officials and that the status of the appellant-plaintiff as a tenant stands affirmed in the proceedings that were initiated under Section 77 of the Punjab Tenancy Act leading to passing of the judgment and decree Ex. D1 and D2 and affirmation of the same by the subsequent dismissal of appeal. He further contends that a mere wrong entry would not extinguish the right that stand crystallized in favour of the respondent-defendants and that no separate suit for declaration was required to be filed by the respondents-defendants. The burden rather lay upon the appellant-plaintiff to seek such a declaration by means of filing a separate suit.

16. While responding to the reliance placed by the appellant-plaintiff on the statements Ex. P-6 and P-7 in the proceedings before the Assistant Collector, First Grade, learned counsel further contends that the said statement can not be read beyond the proceedings. The petition instituted by the respondent-defendant finally culminated in a judgment in favour of the respondent-defendants and that the said judgment has already been upheld. He said that despite giving due consideration to the aforesaid statements and the cross-examination (which are being read in isolation), the relationship of the appellant-plaintiff as tenant was decreed by the revenue authorities. Thus, the said statement merged in the ultimate judgment and

decree that was passed by the revenue authorities which have already been upheld in the appellate proceedings by the Collector and has attained finality.

17. It is additionally argued by the learned counsel appearing on behalf of the respondent-defendants that the Hon'ble Supreme Court has held in the matter of ***“Brij Narayan Shukla (dead) through LRs versus Sudesh Kumar alias Suresh Kumar (dead) through LRs and others”*** reported as **2024 (2) SCC 590** that a tenant cannot claim adverse possession against the land lord and that adverse possession can be claimed, if at all, against such transferee from date on which titles transfer to such transferee and not prior thereto. Possession of the tenants prior thereto was held to be impermissible for establishing adverse possession and the claim of the tenant was declined therein. The relevant extract of the said judgment reads thus:-

“10.4. The suit of the year 1944 was for the arrears of rent and not relating to any dispute of possession. The respondent-defendants were tenants and therefore their possession was permissive as against the then landlords. There was no question of them claiming any adverse possession from 1944.

10.5. In our considered view, the appellant-plaintiffs got their ownership/ title under the registered sale deed on 21-1-1966. The dispute for possession vis-à-vis the respondent-defendants would arise only after the said date and not on any date prior to it. Admittedly from the date of the sale deed, the suit was filed within the period of 12 years in May 1975. Even if it is assumed that the respondent-defendants were in possession from prior to 1944, their possession could not have been adverse even to the Zamindars as they were tenants and their tenancy

would be permissible in nature and not adverse. There were no proceedings for possession prior to 1966.

10.6. Further, the first appellate court having recorded a specific finding that the land in suit was not covered by Zamindari Abolition as it was non-agricultural land, the claim of ownership from the date of abolition of Zamindari was also without any merit. The finding has not been disturbed by the High Court. The respondent-defendants thus having failed to establish their title, would have no right to retain the possession.”

18. I have heard learned counsel appearing on behalf of the respective parties and have through the documents available on record with their able assistance.

19. The core question which arises for consideration is as to whether the possession in the hands of the appellant-plaintiff became adverse at any point of time entitling the plaintiff to claim declaration as owner by way of an adverse possession. The entire case of the appellant-plaintiff hinges upon the jamabandi entry that was recorded in Kharif 1973. There is however nothing on record on the basis whereof, it can be ascertained that the above entry was recorded after due notice to the respondent-defendant and that the procedure prescribed under the revenue law was followed.

20. For establishing a claim of adverse possession, the twin conditions of ‘possession’ and ‘*animus possidendi*’ are required to be established. It was held by the Hon’ble Supreme Court in the matter of **“Konda Lakshmana Bapuji versus Govt. of Andhra Pradesh”** reported as **(2002) 3 SCC 258** that adverse possession is a mixed question of law and fact. Existence of possession and animus possidendi are essential conditions.

There thus must be a clean and unequivocal assertion of title to the land by the possessor indicative of the animus possidendi. Perusal for the reckoning of the adverse possession commences from the date both of above are shown to co-exist. The burden lies on the party claiming adverse possession.

21. Further, the aspect of possession, by way of an ouster of the true owner, has to be pleaded and established. The Hon'ble Supreme Court has held in the matter of ***"Darshan Singh versus Gujjar Singh (Dead) by LR's"*** reported as ***2002 (2) PLR 233 (SC)*** that mere mutation in favour of one co-sharer does not make out an ouster unless there is a clear declaration of himself and denial of title of others is denied.

22. The pleadings in the present case fail to reflect on the above essential ingredients and reliance is solely on the revenue entry which had been corrected. Appellant has not even given the date or time when his possession became open, exclusive and hostile under similar circumstances, this Court held in the matter of ***"Jarnail Singh versus Gurmail Singh"*** reported as ***(2005)1 PLR 370*** that adverse possession would not be held to be proved when it is not pleaded that possession of land in the head of the father was adverse at any time or hostile to the owner. Merely because the possession was in the knowledge of the owner does not make the same as adverse.

23. The law does not give rise to a presumption of adverse possession and specific plea is not only required to be raised but also proved. It was held by this Court in the matter of ***"Mam Chand and others versus Maru and others"*** reported as ***(2005) 2 PLR 20*** that a person pleading adverse possession does not do so on equity. Since he aims to defeat the

right of the true owner, it is for him to plead and establish his case and as to at what point in time, his possession became hostile.

24. Even otherwise the above sole revenue document was subsequently, vide a fard badar, Form-1, was corrected and the proceedings for seeking a declaration that the appellant-plaintiff was a tenant under the respondent-defendant was also instituted alongwith seeking ejectment of the appellant-plaintiff. The said proceedings under Section 77 of the Punjab Tenancy Act concluded by way of judgment and decree dated 05.02.1987 Ex. D1 and D2 respectively. Thereafter, an appeal was also filed against the said judgment and decree, which was also dismissed by the Collector. The Jamabandi Ex. P-5 pertaining to the year 1960 and the Jamabandi Ex. D7 for the year 1965 also established that Karim Baksh @ Karim Khan i.e. father of the appellant-plaintiff was a tenant on batai $\frac{1}{2}$ under Bhure Khan-Predecessor interest of respondents-defendants. There was thus, continuity of the revenue record to the extent of reflecting the tenant-landlord relationship. The cross-examination to the effect whereby the appellant-plaintiff, while appearing as PW-1, has stated that he had inherited the possession from his father necessarily entails that such possession has been inherited alongwith all pertinent rights and liabilities thereto. In the absence of establishing that the possession was ever surrendered at any point of time either by Karim Baksh @ Karim Khan or thereafter by the appellant-plaintiff before reoccupation of the land, the continuity has to be seen in the same status and stature. The inherent characteristic of the possession cannot thus, undergo a change merely by a change of entry in the revenue record without following the due procedure of law, notwithstanding that such change has also been rectified by the revenue authorities in appropriate proceedings.

25. It was held by this Court in the judgment of “**Niranjan Singh versus Bachittar Singh**” reported as **2007 (3) RCR (Civil) 555** that when a person establishes his possession as a matter of right of succession, he cannot be said to be claiming adverse possession.

26. Further, the Hon’ble Supreme Court held in the matter of “**Abdul Rehman versus Prasony Bai**” reported as **(2003) 1 SCC 488** that plea of adverse possession can not be raised by a tenant against a true owner. The burden of proving cessation of the relationship of the landlord and tenant is on the person who asserts the same. Reliance in this regard can be made on the judgment in the matter of “**Harish Chander and others versus Ghisa Ram and another**” reported as **1981 PLJ 121**, the relevant extract whereof reads thus:-

“No suspicion can attach to the entries in the Jamabandi for the year 1959-60, nor have the contents of that document been assailed before us. A presumption of truth attaches to those entries in view of the provisions of section 44 of the Punjab Land Revenue Act. That presumption is no doubt rebuttable but no attempt has been made to displace it. Further, once that presumption is raised, still another comes to the aid of respondent No. 1 by reason of the rule contained in section 109 of the Indian Evidence Act, namely, that when two persons have been shown to stand to each other in the relationship of landlord and tenant, the burden of proving that such relationship has ceased, is on the party who so asserts. It may therefore be legitimately presumed that the plaintiff continued to possess the land as a tenant till the institution of the suit.

Even though the question of possession of the plaintiff as a tenant is a question of fact which is

concluded by concurrent findings arrived at by the Courts, below, we confirm these findings after consideration of the relevant material.”

27. It is noticed that a specific plea had been taken by the respondent-defendants in the written statement filed by them about the tenancy of Karim Baksh @ Karim Khan and that an evasive denial thereof had been made in the replication. There was no pleading made by the appellant-plaintiff as regards the mode and manner in which the claim of open, exclusive and hostile possession of the land with him could be established.

28. It is also well settled position in law that plaintiff has to stand up on his legs and build up his case and cannot prove his case by relying on the defects/lacunae or short comings in the case of the defendants. The sole entry in Kharif 1973, relied by appellant-plaintiff to claim vesting of an adverse possession cannot even otherwise be relied upon being inconsistent with previous entry and is without notice. Reference in support of the position in law can be made to judgments in the matter of **“Roop Singh and another versus Ram Singh”** reported as **1988 PLJ 209**. The relevant extract thereof reads thus:-

“5. The learned appellants' counsel relied upon the decision of this Court in Mahant Gurdit Singh v. Shiromani Gurdwara Prabandhak Committee, Amritsar, 1972 PLJ 379, which lay down that if there is conflict between the later entry and the earlier one in the record of rights, the later as against the earlier should prevail. This is a proposition which cannot be disputed. However, if it is shown that the later entry is null and void, the earlier one has to prevail. If the entry in the later Jamabandi is found to be inconsistent with the previous one and there is no explanation with regard to the same, no reliance can

be placed on the later Jamabandi. In the instant case in the earlier Jamabandi of 1965-66 (Exhibit P/1) the defendants do not figure at all and in the later Jamabandi of 1970-71 (Exhibit P/3) they are shown to be tenants on the land on payment of annual Chakota of Rs. 150/-. But this entry is based on a null and void entry in the intervening Khasra Girdawari and as such the learned first appellate Court was amply justified in discarding the later Jamabandi (Exhibit P/3) while holding that the defendants have failed to prove that they have entered into possession of the land in dispute as tenants.”

29. Further reference may also be made to the judgment in the matter of **“Boota Singh (deceased) through LRs. Versus Harbhajan Singh and others”** passed in **RSA No. 517 of 2015**, the relevant extract thereof reads thus:-

“It is well settled that entries in jamabandi carry a presumption of truth and such entries can be changed only after notice to the person in whose favour such entries are. From the circumstances appearing on record it cannot be inferred that the plaintiffs/respondents were served before effecting change in khasra girdawaries/jamabandies and, as aforesaid, learned counsel for the defendants/appellants has not been able to show any evidence to show that the possession of the suit property was surrendered in favour of the defendants-appellants or that they are in possession of the suit property.”

30. The position in law thus negates the very foundation of the claim of the plaintiff rendering it unsustainable. The appellant thus would not be justified in contending that the correction of revenue record is non-est as proceeding under Section 45 of the Punjab Land Revenue Act, 1887 had not been initiated by the defendant. Such recourse, if any, was required to be

taken by the appellant-plaintiff if he was aggrieved of the correction of revenue record.

31. Counsel for the respondent has failed to controvert the position of law as expounded in the judgment.

32. Concurrent findings of facts have been recorded by both the Courts and that in the absence of any cogent or convincing evidence on the basis whereof the findings can be said to be misconceived, patently illegal or inherently defective, the same are not to be ordinarily reversed in a second appeal.

33. In view of the aforesaid, the present appeal is devoid of merit. The same is accordingly dismissed for the aforesaid reasons and the judgment and decree passed by both the Courts are upheld.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 26, 2024
Vishal Sharma

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