

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

RSA-1053-1991 (O&M)
Reserved on: 12.03.2024
Pronounced on: 19.03.2024
2024:PHHC: 039782

SHER SINGH AND OTHERS

. . . . APPELLANTS

Vs.

HAWA SINGH AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Som Nath Saini, Advocate, for the appellants.

Mr. Raman Chawla, Advocate, for respondents No.2 & 3.

Mr. Adarsh Dubey, Advocate, for respondents No.5 to 7.

DEEPAK GUPTA, J.

Plaintiffs (appellants herein) and proforma defendants (proforma respondents herein) are the sons of Ami Lal. Plaintiffs filed Civil Suit No.263 of 1985 titled '*Sher Singh and others Vs. Hawa Singh and others*' seeking a decree of permanent injunction regarding the land in dispute, which was decreed by the trial Court, but the appeal filed by the contesting defendants was allowed by the First Appellate Court, against which the plaintiffs have approached this Court by way of the present Regular Second Appeal.

2. According to the plaintiffs, their father Ami Lal used to be in possession of the suit land as tenant and after his death, they (plaintiffs) along with proforma defendants have been in possession thereof. Defendant No.1 Hawa Singh (now respondent No.1) purchased the suit land from Central Government without information to the plaintiffs/proforma defendants and said defendant No.1 along with other defendants wanted to dispossess the plaintiffs. Plaintiffs prayed for grant of decree of permanent injunction.

3. Defendants No.1, 2 & 5 (respondents No.1, 2 & 5 herein)

contested the suit. According to them, suit property was purchased by defendant No.1 Hawa Singh in auction on 26.11.1976 and 09.09.1977 and he got possession of the suit land in accordance with law on 06.10.1977. Later on, said Hawa Singh sold part of the suit land to defendant No.2 and the remaining land to defendant No.5 and on the basis thereof, defendants No.2 & 5 are now in possession.

4. Necessary issues were framed. The material issue was as to whether plaintiffs and proforma defendants are in cultivating possession of the suit land as tenant on payment of fixed rent as alleged?

5. After taking evidence produced by both the parties, the trial Court found plaintiffs to be in possession of the suit land on the basis of the revenue record and decreed the suit vide judgment dated 19.02.1990. Defendants No.2 & 5 Siri Ram and Satpal challenged the aforesaid judgment and decree of the lower Court. The First Appellate Court in Civil Appeal No.5-13 of 1990 titled '*Satpal and another Vs. Sher Singh and others*', found the possession of the contesting defendants on the suit land as on the date of filing of the suit and also observed that presumption on account of entries in the revenue record in favour of plaintiffs stood rebutted and so, allowed the appeal and dismissed the suit of the plaintiffs by way of judgment dated 14.02.1991.

6. Challenging the aforesaid findings of the first Appellate Court, it is contended on behalf of the plaintiffs-appellants by ld. counsel that ld. first Appellate Court misread the evidence on record. The evidence of defendants has been wrongly relied upon. The khasra girdawari entry till kharif 1982 reflected the possession of the plaintiffs on the suit land. The reliance on warrant of possession Ex.D1, rapat roznamcha Ex.D2 and the entries in the

sale deed Ex.P6 & P7 was wrong, as these were mere paper transactions and these being fictitious documents, were liable to be ignored. It is contended by ld. counsel that as per the rules governing evacuee property, sale certificate/conveyance deed is issued entitling the purchaser to take possession of the property only after the purchase money has been realized in full from the said purchaser and therefore, ld. first Appellate Court should not have relied upon the sale documents produced by the defendants. Prayer is made for setting aside the impugned judgment and decree passed by the first Appellate Court and to restore the judgment and decree of the trial Court.

7. On the other hand, ld. counsel for the respondents contend that ld. first Appellate Court rightly came to the conclusion that plaintiffs – appellants were not in possession of the suit land and that the presumption arising out of the revenue record stood rebutted.

8. I have considered submissions of both the sides and have appraised the record.

9. It will be apt to reproduce the findings arrived at by the first appellate Court on the basis of evidence on record:-

“7. The main point and rather the only point to be decided by me at this stage is whether plaintiffs Sher Singh etc. alongwith the proforma defendants are in possession of the suit land. The question is one of facts and, therefore, a resort has to be made to the evidence led by the parties.

8. The oral evidence on the file in favour of the plaintiffs is the statement of Sher Singh plaintiff himself. Nobody from the village has turned up to support him. His own statement being an assertion and only allegation cannot be converted into convincing evidence unless it is supported with other cogent evidence.

9. The other evidence in favour of the plaintiffs is the revenue record consisting of Jamabandis and girdawaris. The Jamabandis are Ex.P.1 to Ex.P.5. Ex.P.1 for the year 1963-64, Ex P.2 is for the year 1966-67, Ex.P.3 is

for the year 1971-72. In all these Jamabandis, it is Ami Lal who is recorded to be in possession. Jamabandi for the year 1976-77 and for the year 1981-82 show that Sher Singh etc. had come in possession of the suit land. Similarly the girdawari Ex.P.10 is from Kharif 1953 to Harhi 1954 wherein Ami Lal had been recorded to be in possession as pattedar. In khasra girdawari Ex.P.11 Ami Lal has been shown to be in possession till Harhi 1958 under the custodian and then under the allottee. Ex.P.12 is khasra girdawari from Sawani 1958 to Rabi 1962. Here Ami Lal is recorded to be in possession as Gair Maurusi.

10. These Khasra girdawaris show that Ami Lal and after his death plaintiffs and proforma defendants had been recorded to be in possession till 1982. But this revenue record except Jamabandi Ex.P.5 for the year 1981-82 shows only the earlier and the past possession and that the present position. (Entries of Ex P.5 are discussed in the later portion of this Judgment). As stated above, the suit land was put to auction and it was purchased by one Hawa Singh. Hawa Singh got the warrant of possession issued in his favour and this warrant was executed and possession was delivered to him vide report roznamcha on 6.10.1977. The warrant on the record is Ex.D-1 and the report of roznamcha is Ex.D-2. Thereafter it is the name of Hawa Singh recorded in the revenue record as owner in possession.

11. This Hawa Singh sold a portion of this land to appellant Satpal and another portion to appellant Siri Ram. Possession was also transferred in the names of the vendors. The mutation based on sale are Ex.P6 and P7, which also show that the possession was delivered to Satpal and Siri Ram vendors who are defendant-appellants

12. The learned trial Court on the basis of past revenue record has held that the plaintiffs are continuing to be in possession and that the report of roznamcha Ex.D.2 is a fictitious document. As a matter of fact, there was no evidence before the learned trial court for holding the report of roznamcha Ex.D.2 as fictitious document. The view of the trial court is erroneous and unfounded.

13. On the other hand, there are statements of as many as four witnesses, who speak of the fact that it is the appellants, who are in possession. DW1 Siri Ram is the appellant himself. DW4 Manphul is the father of appellant Satpal. Of course they are parties to the proceedings and their statements may not carry much evidentiary value. But when these statements are read with the other evidence, they become convincing. DW2 Ramji Lal is a neighbour

of this land and he has stated that this land had vested in the Custodian and later on Hawa Singh had purchased it in auction and he sold this land to the appellants. He has also deposed that Hawa Singh had got the possession and now his vendees, the present appellants, are in possession. Similar is the statement of DW3 Sehan Lal, who also happens to be a neighbour of this land.

14. Then there is the statement of DW5 Suresh Kumar, clerk of the office of the Tehsildar. He has proved Ex.D-1, the warrant of possession issued by the office of the Tehsildar (Sales). He has also proved Ex.D-2, the proceedings of the execution of this warrant, whereby the possession was delivered to the purchaser Hawa Singh. He also proved the sale certificate, Ex.D-3 and Ex.D-4 in favour of Hawa Singh,

15. Ex.D-5 and Ex.D-6 are the Jamabandis for the year 1986-87. These Jamabandis show that the present appellants are in possession. Ex.D-8 to Ex.D-14 show the appellants to be in possession from Sawani 1982 up to Rabi 1989.

16. The warrant of possession was executed on 6.10.1977 and this way the possession was delivered to Hawa Singh on that day. Only one Jamabandi Ex.P.5 for the year 1981-82 show that it were Sher Singh etc. who were recorded to be in possession, even after the delivery of possession. It is true that presumption of truth is attached to Jamabandi but this presumption is rebuttable and in the case in hand, as discussed above, it stands rebutted. Even this Jamabandi shows that it was Central Government who was the owner. As a matter of fact, the ownership had been purchased by Hawa Singh earlier. So the entries in this Jamabandi are not correct.”

10. The above said findings as recorded by ld. first Appellate Court would clearly reveal that though as per the revenue record possession of Ami Lal/ his sons-plaintiffs had been recorded earlier but based on the evidence of an official of the Tehsildar (Sales), it has been found that suit property was put to auction, which was purchased by Hawa Singh. Sales certificates Ex.D3 and D4 were duly proved in favour of said Hawa Singh. Not only this, Hawa Singh got issued warrant of possession in his favour, which was duly executed

and the possession was found to have been delivered to him vide rapat roznamcha dated 06.10.1977. The warrant of possession Ex.D1 and rapat roznamcha Ex.D2 are duly proved on record and thereafter, it is Hawa Singh, who was recorded in the revenue record as owner in possession. Hawa Singh later on sold the property to respondents No.2 and 5 i.e. Siri Ram and Satpal regarding which mutations Ex.P6 and P7 were sanctioned.

11. Ld. first Appellate Court has rightly discarded the entries in Jamabandis for the year 1981-82, showing the appellants to be in possession because by way of warrant of possession executed in October 1977, possession had already been delivered to Hawa Singh. Ld. first Appellate Court rightly held that presumption attached to the entries of said Jamabandi stood rebutted in view of the warrant of possession duly executed, delivering possession to Hawa Singh way-back in October 1977. It has also been rightly noticed that entries of this Jamabandis for the year 1981-82 are palpably wrong, as it shows Central Government to be owner of the land, though as a matter of fact, ownership had already been purchased by Hawa Singh. Not only this, Jamabandis for the year 1986-87 and the subsequent revenue record shows the contesting respondents - defendants to be owner in possession of the land in dispute.

12. Ld. trial Court held the possession of the plaintiffs-appellants based upon the past revenue record, by ignoring the warrant of possession and the rapat roznamcha and by holding the same to be fictitious documents without giving any reasoning for holding so, despite the fact that warrant of possession as well as rapat roznamcha were duly proved on record by the testimony of official of the Tehsildar (Sales). Ld. trial Court even ignored the testimony of neighbours of the field, who duly proved the possession of

contesting defendants ever-since the purchase by Hawa Singh. These findings of trial court have been rightly reversed by the first appellate court.

13. Reliance of ld. counsel for the appellants before this Court on the rules relating to sale of evacuee property is absolutely misplaced because it was never the case of the plaintiffs-appellants that sale certificate/ conveyance deed could not have been issued in favour of Hawa Singh due to non-payment of the full purchase money. So much so, the Central Government was never impleaded as a party in this regard. The relief in the suit was only for permanent injunction. Possession of the contesting defendants was duly established by the revenue records. As such, ld. First appellate Court, rightly held the findings of the trial Court to be erroneous.

14. As such, concurring with the findings as recorded by the first Appellate Court, this Court finds no merit in the present appeal. Affirming the judgment as passed by the ld. first Appellate Court, present Regular Second Appeal, is hereby dismissed.

19.03.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>