



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4613-2000 (O&M)

Reserved on: September 11, 2024

Date of Decision: September 17, 2024

Ram Singh

... Appellant

Versus

Jaswinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Vishal Gupta, Advocate for the appellant.

Mr. Mohd. Yusuf, Advocate for the respondents.

DEEPAK GUPTA, J.

Defendant of the suit is in this appeal against the reversal.

2.1 Facts of the case, in brief, are that Natha Singh S/o Chanan Singh was admittedly owner of the suit land measuring 24 kanals 0 marlas, situated within the revenue estate of village Sekhu detailed in head note of the plaint. Legal heirs of said Natha Singh (*respondents herein*) filed Civil Suit No.421 of 1996 claiming that Natha Singh had died about 8-9 years ago and that during his life time, he had mortgaged the suit land to Banta Singh & Santa Singh, who had given the same to defendant – Ram Singh (*appellant herein*) on rent. Entries to that effect were incorporated in Jamabandi and Khasra Girdawari. It was claimed further that Natha Singh had got the suit land redeemed from Banta Singh & Santa Singh and he then got the possession thereof and a Rapat No.300 dated 24.08.1987 was lodged with the Patwari to that effect. However, the entries in the revenue record remained the same, which are against the facts. After the death of Natha Singh, plaintiffs inherited the suit property and mutation in their favour was sanctioned. It was alleged that taking undue advantage of wrong entries of possession in

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his favour, defendant – Ram Singh filed Civil Suit No.83 of 1983 for declaration to the effect that he was owner in possession of the suit land by way of adverse possession. That suit was dismissed by the Civil Judge (Sr. Divn.), Bathinda on 16.02.1996. However, in that suit, the present plaintiffs were restrained from dispossessing the present defendant – Ram Singh from the suit land except in due course of law. It was further alleged by the plaintiffs that after the abovesaid decision dated 16.02.1996, defendant illegally and forcibly took possession of the suit land in the first week of March, 1996. Request was made to the defendant to deliver the possession of the suit land went unheeded and so, plaintiffs filed the suit for decree of possession.

2.2 Stand of the defendant in his written statement was that he had become owner of the suit land on the basis of adverse possession for a period more than 12 years without payment of any rent or share of produce to anybody. He claimed his possession since Kharif 1979. According to him, Natha Singh was never in the possession of the suit property. Defendant denied that suit property was ever mortgaged by Natha Singh to Banta Singh & Santa Singh and alleged the mortgage deed referred by the plaintiffs to be a paper transaction, as possession was never delivered to said Banta Singh & Santa Singh and regarding which there was already a finding by the Civil Court. He also alleged the Rapat No.300 dated 24.08.1987 to be a forged, fabricated and illegal document. He also submitted that his appeal against the judgment & decree dated 16.2.1996 in civil suit N: 83 of 1993 was pending before Additional District Judge, Bhatinda. With this stand, he prayed for dismissal of the suit.

2.3 In the rejoinder, plaintiffs reiterated their claim, refuting the stand of defendant.

2.4 Following issues were framed for adjudication :-



"1. Whether defendant took possession of suit land illegally in the first week of March as alleged? OPD.

2. If issue no.1 is proved the plaintiffs are entitled to possession of suit land? OPP."

3. Whether the plaintiffs have no locus-standi to file the present suit? OPD.

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

5. Whether the plaintiffs are estopped to file the present suit by their own act and conduct? OPD.

6. Whether the suit is false, frivolous and vexatious and defendant is entitled to special costs under Section 35-A? OPD.

7. Relief.

2.5 After taking evidence produced by the parties, the trial Court observed that though plaintiffs have not produced any document to show that the suit land was mortgaged by Natha Singh in favour of Banta Singh and Santa Singh or that it was got redeemed by Natha Singh, but said fact had not been denied by the defendant. *(here itself it may be noted that in his written statement, defendant – Ram Singh had specifically denied any mortgage by Natha Singh in favour of Banta Singh and Santa Singh and had claimed the alleged mortgage deed to be only a paper transaction).* The trial Court also observed that plaintiffs had not produced Rapt No.300 dated 24.08.1987 to show that Natha Singh had got possession of the suit land that from Banta Singh and Santa Singh. Though, plaintiffs were found to be owner of the suit land having inherited the same after the death of Natha Singh, but they (plaintiffs) failed to prove that they had been dispossessed by the defendant in first week of March, 1996, as was alleged.

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2.6 It was further found by the trial Court that Civil Suit No.441 of 1987 filed by defendant of this case Ram Singh against Natha Singh was decreed on 18.03.1989 vide judgment Mark B for permanent injunction restraining the defendant of that case, i.e. Natha Singh from taking forcible possession of the suit land. The trial Court further found that by way of decree dated 16.02.1996 (Mark C) in Civil Suit No.83 of 1993 filed by Ram Singh, though his claim for title by adverse possession was rejected, but the suit was decreed to the effect that he could not be dispossessed except in due course of law. Trial Court concluded that as this judgment was passed on 16.02.1996 after holding defendant – Ram Singh to be in possession, so the plaintiffs, i.e. legal heirs of Natha Singh had failed to prove that they had been dispossessed in March, 1996 as had been claimed by them. The trial Court also referred to the revenue record to hold the possession of defendant – Ram Singh on the suit property and concluded that defendant had not taken possession of the suit land forcibly and as such, issue N: 1 was decided against the plaintiffs. The finding on issue No.2 went against the plaintiffs by holding that they were not entitled to the possession. Under issue Nos.3 and 4, plaintiffs were held to have locus standi to file the suit and the suit was held to be maintainable and as such, these issues were decided against the defendant. No evidence was led on issue Nos.5 and 6. As such, these issues were against the defendant. Consequent to all these findings, suit was dismissed on 03.02.1999.

2.7 The aggrieved plaintiffs filed appeal before the District Judge. Learned Addl. District Judge, Bathinda in Civil Appeal No.34 of 1999, reversed the judgment of trial court by way of impugned judgment dated 22.11.2000. It was held by the Appellate Court that issue No.1 had been wrongly framed, inasmuch issue should have been as to whether the plaintiffs are owner of the suit land and whether they are entitled to the possession of the same because the possession of the defendant

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over the suit land was admitted case of the parties. It was further held by the Appellate Court that ownership of the plaintiffs regarding the suit land was not in dispute nor it was disputed that defendant was in possession thereof, but merely because a wrong plea had been taken by the plaintiffs to the effect that they had been dispossessed in the first week of March, 1996, they could not be non-suited. Learned First Appellate Court held further that in the previous litigation also, defendant was held liable to be dispossessed by following due course of law and since the present suit had been filed for seeking possession in accordance with law, therefore, the suit was maintainable for seeking possession. With these findings, the judgment and decree dated 03.02.1999 of the trial Court was set aside and the suit of the plaintiffs for possession of the suit land was decreed.

3.1 Assailing the aforesaid findings by way of the present appeal, it is contended by learned counsel for the appellant - defendant that a specific plea had been taken by the appellant-defendant to the effect that Natha Singh had never mortgaged the suit land to Banta Singh and Santa Singh nor had ever delivered possession to them and that alleged mortgage deed was only a paper transaction and therefore, observations to the contrary made by the Civil Court was against facts.

3.2 Learned counsel contends further that appellant-defendant has been in possession of the suit land since Kharif 1979. His possession has been upheld even up to this Court in the capacity of *Gair Maurusi* tenant without payment of any rent and therefore, he could not be dispossessed except in due course of law. Learned counsel contends further that such a tenant can be dispossessed only under the provisions of the Punjab Tenancy Act, 1887 to be read with Punjab Security of Land Tenure Act and not by regular civil suit before the civil Courts. Learned counsel has relied upon ***"Nand Singh v. Pritam Singh", 2020(1) R.C.R.***



(Civil) 77 in support of the said contention.

3.3 Ld. Counsel also placed on record copy of the judgment dated 18.03.2024 passed by a co-ordinate Bench of this Court in RSA No.1077 of 1993 titled as ***“Natha (through his LRs) v. Ram Singh (through his LRs)*** in order to contend that possession of Ram Singh, i.e. defendant of present case was upheld in the capacity of *Gair Maurusi* tenant.

3.4 With these submissions, he prayed for setting aside the judgment of the First Appellate Court and to dismiss the suit of the respondents-plaintiffs.

4. Refuting the aforesaid contentions, it is argued by learned counsel for the respondents-plaintiffs that the appellant-defendant cannot be allowed to blow hot and cold in the same breath. On one hand, he claimed title to the suit property on the basis of adverse possession; whereas, on the other hand, he is claiming his possession as *Gair Maurusi* tenant. Learned counsel contends that plea of the appellant-defendant to have become owner of the suit property by way of adverse possession has already been rejected by the Civil Court vide judgment dated 16.02.1996 passed in Civil Suit No.83 of 1993 and therefore, the present suit seeking possession before the Civil Court is maintainable and has been rightly decreed by the first appellate court.

With these submissions, he prays for dismissal of the present appeal.

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

6. It is undisputed that Natha Singh was the owner of the suit land, whereas appellant – Ram Singh is in possession thereof. Revenue

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record as available on trial Court record would indicate that in jamabandi for the year 1977-78, Natha singh is recorded to be owner in self-occupation of the suit land, though in the next jamabandi for the year 1987-88, it is Ram Singh, who is recorded to be in possession as '*Gair Maurusi*'. It is for the first time in Kharif 1979 that possession of Ram Singh is reflected as such. Nowhere in the revenue record, the capacity of Ram Singh is recorded, as to whether he is a tenant or in unauthorized possession. The only words used are '*Gair Maurusi*' with column of rent lying blank.

7. As parties have litigated earlier, it will be relevant to refer about the previous litigation. In the present litigation, Ram Singh claims to be in adverse possession of the suit land, but in the previous litigation, he claimed himself to be tenant under Natha Singh.

8. The earlier litigation is Civil Suit No.158 of 1980, which suit was filed by Ram Singh against Santa Singh and Banta Singh on 05.12.1980. The copy of that judgment dated 19.03.1982 in that suit is available on the record of the trial Court as Mark C, in which clear stand of Ram Singh was that Natha Singh was owner of the suit land and that he (Ram Singh) was the tenant under him since Kharif 1979; that Natha Singh had mortgaged his land with the defendants of that case, i.e. Banta Singh & Santa Singh, who wanted to forcibly dispossess him and as such, he had prayed for decree of permanent injunction. Said suit was decreed by holding that he (Ram Singh) could not be dispossessed except in due course of law.

9.1 The next litigation started on 21.07.1987, when Ram Singh filed Civil Suit No.441 of 1987 against Natha Singh, taking the same stand to the effect that he (Ram Singh) was '*Gair Maurusi*' tenant under Natha Singh; that Natha Singh had mortgaged the land to Santa Singh & Banta Singh without possession; that when Santa Singh & Banta Singh had

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tried to dispossess him, a decree in his favour was passed on 19.03.1982 and now the defendant of that suit, i.e., Natha Singh wanted to dispossess him. The said suit was decreed on 18.03.1989, copy of which is Mark B.

9.2 This litigation came up to this High Court, inasmuch as Natha Singh through his LR's filed Civil Appeal against the judgment dated 18.03.1989, which was dismissed by learned Addl. District Judge, Bathinda on 18.07.1992 and then Natha Singh through his LR's filed RSA No.1077 of 1992, which was dismissed by a co-ordinate Bench of this Court on 18.03.2024, whereby judgments of the Courts below were upheld.

10.1 Then came the third round of litigation, which was again started by Ram Singh in 1993, when he filed Civil Suit No.83 of 1993 against legal heirs of Natha Singh (*plaintiffs – respondents of the present case*), this time claiming title to the suit property on basis of adverse possession. Contrary to the stand taken in the earlier litigation, Ram Singh pleaded in this case that though Natha Singh was the owner of the suit land, which after his death had been inherited by the defendants of that suit, i.e. legal heirs of Natha Singh, but he (Ram Singh) was in adverse possession of the suit property for the last 14-15 years without payment of any rent or any share of crop etc.; that his possession was open, hostile and to the knowledge of the defendants, which had ripened into ownership and as such, he had become owner of the suit property by way of adverse possession. He prayed for decree of declaration to that effect and sought injunction to restrain the defendants from interfering in his possession or alienating the suit property.

10.2 Learned Civil Judge (Sr. Divn.), Bathinda by way of the judgment dated 16.02.1996 rejected the claim of said Ram Singh to the



effect that he had become owner of the suit land by way of adverse possession. However, upholding the plea that he was in possession of the suit land, the defendants were restrained from interfering in his possession except in due course of law.

10.3 Not satisfied with the above judgment, Ram Singh filed appeal bearing Civil Appeal No.43 of 1996, but the same was dismissed by the Court of learned Addl. District Judge, Bathinda on 26.10.1998, copy of which is available on the trial Court record. There is no contention that any further appeal was filed by Ram Singh to take his claim in the suit property on the basis of adverse possession.

11. The 4th litigation is Civil Suit No.421 of 1996, which was filed by legal heirs of Natha Singh and out of which present appeal has arisen. As noted earlier that in this suit, legal heirs of Natha Singh claiming to be owner of the suit property and alleging that they had been forcibly dispossessed, sought decree of possession. The trial Court dismissed the suit by holding that Ram Singh was in possession and there was no evidence regarding dispossession. However, the Appellate Court set aside the judgment of the trial Court and held the plaintiffs to be entitled for the possession over the suit property.

12. The main questions to be decided by this Court are:-

(I) About the capacity of Ram Singh, in which he is in possession of the suit property.

(II) Which Court is competent to order his ejectment/dispossession?

13. Merely because Ram Singh is recorded by a '*Gair Maurusi*' in the revenue record, does not mean that he is a tenant over the suit property. Here itself, it will be relevant to notice the definition of 'tenant', 'landlord' and 'rent' as provided in Punjab Tenancy Act, 1887.



These read as under:-

“4. (3) “rent” means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him;

4. (5) “tenant” means a person who holds land under another person and is, or but for a special contract would be liable to pay rent for that land to that other person; but it does not include ---

(a) an inferior landowner; or

(b) a mortgage of the right of a landowner; or

(c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1887, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear; or

(d) a person who take from the Government a lease of unoccupied land for the purpose of subletting it;

4. (6) “landlord” means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land;”

14 It will be clear from the aforesaid definitions that there can be no tenancy unless there is a condition of payment of rent, though the rent may be payable in cash, kind or service etc. In **Natha Singh & Ors vs The Financial Commissioner, 1976 AIR 1053**, it has been held by Hon’ble Supreme Court that:

“In the absence of payment of rent or in the absence of material to show that there was a contract between appellant No. 1 and appellants Nos. 2 and 3 absolving the latter of the liability to pay rent, it is difficult to uphold the claim of appellants Nos. 2 and 3 that they were tenants of appellant No. 1.”



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15. Thus, it is inconceivable that there can be any tenancy without the condition of payment of rent, unless there is a contract to the contrary, absolving the tenant the liability to pay rent.

16. In the present case, there is neither any pleading nor evidence worth name, either documentary or oral to show that any rent was ever payable or paid in any form whatsoever by defendant – appellant Ram Singh to the owner Natha Singh or after his death to his legal heirs. In the earlier two litigations as have been referred above, i.e. Civil Suit Nos. 158 of 1980, and 441 of 1987, the stand taken by Ram Singh was that he was in possession of the suit land under Natha Singh, but without payment of any rent in any kind. In the latter two litigations, i.e. present suit and the suit, which he filed against legal heirs of Natha Singh claiming adverse possession, Ram Singh took the stand that he is in adverse possession over the suit land without payment of any rent in any kind whatsoever.

17. A party to the litigation cannot be allowed to take contrary stands to suit his convenience. He cannot be allowed to approbate and reprobate. In ***Union of India and Others v. N. Murugesan and Others, (2022) 2 SCC 25***, it has been observed by Hon'ble Supreme Court that these phrases "Approbate and reprobate", borrowed from the Scots law, would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate and also a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit, his wants cannot be allowed to do so while enjoying the fruits.

18. In this case, when in the earlier two litigations, it was ordered by the courts that Ram Singh could be dispossessed in due



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course of law, he changed the stand in next litigations taking contrary plea that he had become owner of suit property by adverse possession. In none of the earlier litigations decided earlier, Ram Singh has been held to be tenant in the suit land, though of course, his plea of possession has been upheld with further direction that he cannot be dispossessed except in due course of law.

19. In view of above discussion, it is held that appellant – defendant Ram Singh is not the tenant on the suit land. There is absolutely no evidence that tenancy was ever created and as such, his possession over the suit land is nothing less than that of a stranger / trespasser.

20. Coming to the next point, the contention of learned counsel for appellant – Ram Singh is that Civil Suit for seeking possession, is not maintainable and that the respondents-plaintiffs should approach the Revenue Authorities to seek the possession, i.e. provisions of Punjab Tenancy Act, 1887 to be read with the provisions Punjab Security of Land Tenure Act. For this reasoning, Ld. counsel has relied upon ***Nand Singh's case (supra)***, in which it was held that when status of defendant is that of a 'Gair Maurusi' tenant without payment of rent, then Civil Court does not have jurisdiction, nor defendant acquires title by way of adverse possession and that remedy for the plaintiff is to seek ejectment in accordance with law. In that case, a co-ordinate Bench of this Court has relied upon judgment of Hon'ble Supreme Court rendered in "***Shyam Lal v. Deepa Dass Chela Ram Chela Garib Dass***", 2016 (3) RCR (Civil) 812.

21. In ***Shyam Lal's case (supra)*** before Hon'ble Supreme Court, the appellant-tenant remained in possession of the land for a fixed term envisaged in the lease agreement from 29.05.1996 to 28.05.2005. He remained in possession even thereafter. Lease in question was not a registered instrument. It was in this factual backdrop that it was held



that such a tenant acquired the status of a tenant holding over or a tenant at will, which would confer on him protection under the Punjab Security of Land Tenure Act, 1953 requiring the landlord to establish proof of any of the conditions specified in Section 9 of Act before being entitled to a decree of eviction.

22. Abovesaid authority is not at all applicable to the facts of the present case. A distinction is required to be made, when a person claims to be tenant in possession of the suit land without payment of rent since beginning; and a person, who claims to be a tenant in possession with the plea that rent was paid for some time and not subsequently. In the latter case, when the person concerned is inducted as a tenant on payment of rent and the rent is not paid, there can be no doubt that a Civil Court will not have jurisdiction and the landlord will have to seek his remedy before the Revenue Authorities to seek of ejectment of such tenant or a tenant holding over, under the provisions of Punjab Tenancy Act, 1887 to be read with the provisions Punjab Security of Land Tenure Act. However, when the possession of person concerned on the suit land is without payment of rent, as in the present case, such as person is no more than a stranger or trespasser over the suit property. In such a situation, his possession, howsoever long it may be, cannot be considered in the capacity of tenant in view of the definition of 'landlord', 'tenant' and 'rent' as discussed earlier. In this eventuality, it is only the Civil Court, which will have the jurisdiction to pass the decree of possession in favour of the landlord.

23. As in the present case, it is the own stand of the appellant-defendant that he is in possession of the land without payment of any rent in cash or any kind etc. and there is absolutely no evidence on record that he was inducted as a tenant at any point of time and his plea of adverse possession has already been rejected in the earlier litigation,



therefore, finding of the First Appellate Court to the effect that plaintiffs-respondents are entitled for decree of the possession, cannot be faulted.

24. On account of aforesaid discussion, it is held that there is no merit in the present appeal. The judgment and decree passed by the First Appellate Court are hereby upheld. Present appeal is hereby dismissed.

September 17, 2024

Sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes
Whether reportable:	Yes