

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****124****RSA-1183-2020 (O&M)****Date of decision: 05.02.2025****Ajmer Singh****...Appellant(s)****Vs.****Gurmail Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Jagjit Singh Gill, Advocate with
Mr. Lakhan Paul Garg, Advocate for the appellant.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit preferred by the plaintiff for declaration to the effect that he is in possession of the suit land detailed and described in the head note of the plaint, has been dismissed.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.

3. Learned counsel for the appellant/plaintiff submits that the plaintiff's predecessor-in-interest was in cultivating possession of the suit property for the last more than 60 years. Previously, Municipal Committee, Kalanwali and now the Gram Panchayat was the owner of the suit land. It is submitted that the defendants have got the Rapat No.



221/1 dated 14.03.2006 (Ex.P6) and Rapat No. 267 dated 28.03.2008 (Ex.P7) alleging themselves to be the son of Dharam Singh son of Bhagwan Singh, whereas in actual fact, the defendant/respondents No.1 and 2 are the LR's of Dharam Singh son of Mastan Singh. However, in the above said Rapats, defendants No.1 and 2/respondents are wrongly shown to be LR's of Dharam Singh son of Bhagwan Singh. The said Rapats are wrong and liable to be set aside as the defendants have no concern with the suit land being LR's of Dharam Singh son of Mastan Singh. It is submitted that on the basis of this misrepresentation and above incorrect Rapats, the defendants are now trying to interfere in the possession of the plaintiff.

4. Learned counsel for the appellant/plaintiff further submits that the plaintiff has duly produced ample voluminous oral and documentary evidence in the form of 6 witnesses and Ex.P1 to P18 to prove his case. However, the said evidence has been wrongly discarded by the learned Courts below. Even the revenue record amply bears out that the plaintiff and his predecessor-in-interest were in cultivating possession of the suit property. However, the same has been misread by the learned Courts below. It is reiterated that the predecessor-in-interest of the plaintiff is Dharam Singh son of Bhagwan Singh, whereas the predecessor-in-interest of the defendants is Dharam Singh son of Mastan Singh. It is accordingly prayed that the present appeal be allowed, and the judgments and decrees of the learned Courts below be set aside.

5. No other argument is raised on behalf of the appellant/plaintiff.



6. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

7. The present suit was filed by the appellant/plaintiff with the pleadings and arguments as noticed above. The Defendants No. 1 and 2 filed their joint written statement, inter-alia, denying the possession of the plaintiff over the suit land. It was also denied that the plaintiff was legal heir of Dharam Singh. It was asserted that the impugned Rapats are legal and valid. Defendants no.3 to 5 filed their written statement similar to the one filed by defendants No.1 and 2. All prayed for dismissal of the suit with costs. No replication was filed by the plaintiff.

8. On the basis of the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP
2. Whether the plaintiff is entitled to consequential relief of permanent injunction as prayed for? OPP
3. Whether the suit is within period of limitation? OPP
4. Whether the plaintiff has no cause of action and locus-standi to file the suit? OPD
5. Relief.

9. On the basis of the pleadings, oral and documentary evidence adduced by the parties, the learned trial Court dismissed the suit of the plaintiff vide judgment and decree dated 01.09.2015. The appeal filed by plaintiff against the said judgment and decree dated 01.09.2015, was



dismissed by the learned Additional District Judge, Sirsa vide judgment and decree dated 06.11.2019. Hence, the present second appeal.

10. It is the case of the appellant/plaintiff that the learned Courts below failed to appreciate the fact that there were two persons in the name of Dharam Singh i.e. one Dharam Singh son of Bhagwan Singh who was predecessor in interest of the appellant/plaintiff and another Dharam Singh son of Mastan Singh who was predecessor in interest of Albel Singh etc. The suit property is stated to have come into cultivating possession of the plaintiff from his predecessor in interest Dharam Singh son of Bhagwan Singh. It is the case of the plaintiff that the defendants have misrepresented themselves to be legal heirs of Dharam Singh son of Bhagwan Singh and got issued the above mentioned Rapats thus laying claim to the suit property. It has been argued by learned counsel for the plaintiff that the plaintiff had proved his case by adducing the additional evidence Ex.P-19 to P-26 that Dharam Singh son of Bhagwan Singh predecessor in interest of the appellant/plaintiff was in cultivation possession of the suit land being co-sharer as Shamlat Zumla Malkan Deh Hasib Hisa Pemna Malkiat for more than 60 years; and after the death of Dharam Singh son of Bhagwan Singh in the year 1953, his property including the suit land was inherited by Pritam Singh, Bakhtawar Singh, Kartar Singh and Mukhtiar Singh in equal shares vide mutation No. 4455 dated 26.02.1954; and the plaintiff proved this fact by placing on file the mutation, pedigree table and other relevant revenue records but the Id. Courts below failed to appreciate the same.



11. However, the above said contentions of the plaintiff are not borne out from the evidence on record. It has been irrevocably established that as per the revenue record the plaintiff is not shown to be in possession of the suit land. In fact, even the predecessor-in-interest of the plaintiff is not shown to be in possession of the suit property. Moreover, the revenue record produced by the plaintiff does not pertain to the suit land. On the other hand, as per the Jamabandi for the year 2012-13 Ex.DX and Khasra Girdawari from 27.09.2014 to 23.04.2015 Ex. DY, Gram Panchayat, Kalanwali is recorded as owner of the suit land; whereas defendants No.3 and 6 are shown to be in cultivating possession. Admittedly, the plaintiff has not arrayed Gram Panchayat as party in the present suit. This omission has been admitted by the learned counsel for the plaintiff before this Court as well. Furthermore, Dharam Singh, predecessor-in-interest of the plaintiff had died in the year 1953, whose land devolved upon his heirs Pritam Singh, Bakhtawar Singh, Kartar Singh and Mukhtiar Singh in equal share vide mutation No. 4455.

12. Moreover, the Rapats under challenge show that the same were entered on the basis of the statement made by Jagsir Singh and Jasvir Singh sons of Albel Singh son of Dharam Singh in the presence of Numberdar and Chowkidar to the effect that Girdawari of Khasra No. 348, and Khasra No. 126 are in the name of their grandfather whose legal heirs are (a) Gurmail Singh, (b) Albel Singh and (c) Hargobind Singh. However, as Gurmail Singh and Hargobind Singh had died unmarried, Albel Singh- the successor, had inherited his property. It has further come on record



that there was no document to show that the plaintiff was in possession of the suit land. Accordingly, Rapat No. 221/1 dated 14.03.2006 and Rapat No. 267 dated 28.03.2008 (Ex.P6 and Ex.P7) showing the defendants in possession of the suit property, were held to be legal and valid. The relevant findings of the learned first Appellate Court as contained in para 19 of the judgment dated 6.11.2019 in this regard, read as under:-

“19. Dharam Singh predecessor in interest of plaintiff belonged to Rama Patti, who had died in year 1953 and whose land was devolved upon his heirs Pritam Singh, Bakhtawar, Kartar and Mukhtair vide Mutation No. 4455 dated 26.02.1954. Learned counsel emphatically submitted that where owners were members of a Patti, a taraf, a panna etc. and land was recorded as Shamilat Patti etc. then the shareholder of the Patti would entitle to use such land in the exclusion of all else. Since, predecessor in interest of the plaintiff was not shareholder of Guruditta Patti, where the suit land was situated, therefore, he could not be recorded in cultivation possession of suit land. Had predecessor in interest of appellant/plaintiff in cultivation possession of the suit land, his successors would have inherited it alongwith land inherited vide mutation no. 4455 dated 26.02.1954. There is no record predecessor in interest of the appellant/plaintiff was in possession of suit land at any point of time. Hence, it clearly shows that it was the predecessor in interest of Albel Singh etc. was in cultivation possession of suit land. Thus, the appellant/plaintiff has once again failed to prove its case.

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21. The parties did not dispute the findings of learned trial court that as per Jamabandi for the year 1971-72 to 2007-08,



M.C. Kalanwali/Gram Panchayat Kalanwali are recorded as owner of the suit land whereas one Dharam Singh is recorded co-sharer in cultivation possession of the suit land. Likewise, the Jamabandi for year 2012-13 Ex. DX and Khasra Girdawari from 27.09.2014 to 23.04.2015 Ex. DY further reveals that Gram Panchayat Kalanwali is recorded as owner of the suit land whereas one Balbir Singh and others are shown in cultivation possession thereof Therefore, Gram Panchayat was the necessary party, which was not impleaded in present case. It is evident from above record that the appellant/plaintiff are not recorded in cultivation possession of the suit land being legal heir of Dharam Singh. There is no document on record to show that the appellant/plaintiff were in possession of the suit land.

22. Learned trial Court further arrived at the finding that the impugned Rapat No. 221/1 dated 14.03.2006 (Ex. P6) and Rapat No. 267 dated 28.03.2008 (Ex. P7) got effected on the statements of Jagsir Singh and Jasvir Singh sons of Albel Singh son of Dharam Singh. The rapats were carried out in presence of Iqbal Singh Numberdar and Sukhdev Singh chowkidar in respect of suit land. Jagsir Singh and Jasvir Singh claimed that it was in the name of their grandfather. On their statement, Girdawari of the suit land changed in favour of Balbir Singh, Darabara Singh, Hazara Singh, Gulzar Singh son of Dhan Singh and Gurmail Singh son of Mithu Singh and Amritpal Singh son of Gurmail Singh.

23. Now, the appellant/plaintiff heavily relied on mutation no. 4455 dated 1954-55 (Ex. P19), the copy of Jamabandi for the year 1954-55 (Ex. P20), Copy of Jamabandi for the year 1920-21 (Ex. P21), copy of pedigree table of Bhagwan Singh (Ex. P25), and the copy of pedigree table of Dharam Singh son of Mastan Singh (Ex. P26), as to show that Dharam Singh son



of Bhagwan Singh was the predecessor of the appellant/plaintiff Ajmer Singh and he was in cultivation possession of the suit land.

24. A bare perusal of Jamabandi for year 1920-21 (Ex. P21 & Hindi version Ex. 21/T) shows that Dharam Singh son of Bhagwan Singh was owner and cultivation possession of 233 K-3 M land of Rama Patti comprised in Khewat No. 99/155 and Khatoni No. 813/823. There is no reference of suit land. Similarly, the Jamabandi for year 1954-55 (Ex. P20 and Hindi version Ex. 20/T) shows that Pritam Singh, Bakhtawar Singh, Kartar Singh, Mukhtiar Singh sons of Dharam Singh son of Bhagwan Singh had succeeded 185 Kanals 19 Marla land falling in Khewat No. 380, Khatoni No. 1285/1296 of Dharam Singh son of Bhagwan Singh vide Mutation No. 4455 Ex. P 19. This Jamabandi is also silent with regard to suit land. The Mutation Ex. P 19 shows that Dharam Singh son of Bhagwan Singh had died in year 1953. Thus, cultivation possession of Dharam Singh son Bhagwan Singh over suit land thereafter does not arise. The evidence of DW-5 Shiv Raj Singh clearly shows that the suit land is situated out of Patti of village Panchayat Kalanwali. This witness specifically stated in his chief examination that no Patti is shown against killa number of suit land in the summoned record and therefore this land is out of Patti. The evidence of DW-5 is not rebutted on this point. There is no documentary evidence to connect the suit land reflecting in Jamabandi for the year 1971-72 to 2007-08, in the ownership of M.C. Kalanwali/ Gram Panchayat Kalanwali with land shown in Jamabandi for year 1920-21 and 1954-55. Hence, the appellant/plaintiff has failed to prove that his predecessor in interest Dharam Singh son Bhagwan Singh was ever in cultivation possession of suit land. Hon'ble Punjab and Haryana High Court in case titled as



Dhoom Singh Vs. Baisakhi Ram 1997 (1) RCR (Civil) 147 has held that the case of the plaintiff has to stand on his own legs and plaintiff cannot rely upon the weakness of the defendants' case.” (Emphasis added)

13. Ld. Counsel for the plaintiff is unable to dispute or controvert the above said findings of the learned Courts below. As such, no ground is made out to interfere in the impugned concurrent judgments and decrees.

14. The present second appeal is hereby **dismissed**.

15. Pending applications, if any, stand disposed of.

05.02.2025

Divyanshi

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

(NIDHI GUPTA)
JUDGE