

Dalip Singh Vs. Hoshiara

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Court : Punjab and Haryana

Decided On : Sep-09-1999

Reported in : (2000)124PLR371

Judge : R.L. Anand, J.

Acts : [Punjab Land Revenue Act, 1887](#) - Sections 11 and 44; ;Punjab pre-emption Act; Evidence Act - Sections 35

Appeal No. : Regular Second Appeal No. 231 of 1986

Appellant : Dalip Singh

Respondent : Hoshiara

Advocate for Def. : None

Advocate for Pet/Ap. : Y.K. Sharma, Adv.

Disposition : Appeal allowed

Judgement :

R.L. Anand, J.

1. Unsuccessful plaintiff Shri Dalip Singh has filed the present Regular Second Appeal and it has been directed against the judgment dated 11.10.1979 passed by the Additional District Judge, Gurdaspur, who affirmed the judgment and decree

dated 6.6.1978, passed by the Court of Sub Judge, 1st Class, PatMnkot.

2. The brief facts of the case are that Shri Dalip Singh son of Shri Avtar Singh, filed a suit for permanent injunction against Shri Hoshiara to the effect that defendant Shri Hoshiara be restrained permanently from interfering in the cultivating possession of the plaintiff as owner of the land measuring 4 kanals 14 marlas bearing Rectangle No. 16 killa No. 26, as entered in the jamabandi for the year 1970-71, situated in village Mallarban, hadbast No. 81, Tehsil Pathankot, District Gurdaspur.

3. The case set-up by the plaintiff was that he was in possession of the suit land as owner. The suit land was an orchard and in some of the area he had started cultivation. Defendant Shri Hoshiara is a stranger. He never cultivated any part of the suit land nor he ever worked on the suit land in any capacity. Defendant in collusion with the revenue staff and taking advantage of the political influence got the entry of Kharif 1976 entered in his name. The defendant never entered upon the suit land nor he had concern with it. The entry in the Khasra Giadawari is illegal, collusive, fraudulent and void. On the basis of this entry the defendant wants to interfere in the possession of the plaintiff forcibly. With the above averments the plaintiff prayed for the relief of permanent injunction.

4. Notice of the suit was given to the defendant who has filed his written statement and contested the suit and he took the preliminary objection that the suit was not maintainable as the plaintiff was not in possession of the suit land on the date of the institution of the suit. The defendant pleaded that he was in possession of the suit land. He had planted trees on some part of the suit land. The plaintiff had no concern with the suit land. The Khasra Girdawari has been entered in his name after the inspection of the spot. With this defence, the defendant prayed for the dismissal of the suit.

5. From the pleadings of the parties, the trial Court framed the following issues :-

1. Whether the plaintiff is in possession as owner of the land in dispute?

2. Whether the defendant planted trees on the land in dispute on the asking of the plaintiff?
3. Whether the plaintiff is entitled to the injunction prayed?
4. Relief.

The parties led oral as well as documentary evidence in support of their case and on the conclusion of the trial, the trial Court held that plaintiff was the owner of the land in dispute but he is not in possession of the suit land. Under issue No. 2 the trial Court held that the defendant never planted any trees etc., at the request of the plaintiff. Resultantly, issue No. 2 was decided against the defendant and in favour of the plaintiff. Since the plaintiff has not been held to be in possession of the suit land, no injunction was granted and therefore, issue No. 3 was decided against the plaintiff. In this regard reliance was placed by the trial Court on a judgment reported as A.I.R. (38) 1951 Travancore-Cochin 221, Chacko Kuncheria v. Govt. of Travancore Cochin.

6. Aggrieved by the judgment and decree dated 6.6.1978, the plaintiff filled an appeal before the first appellate Court which dismissed the appeal for the reasons given in para No. 5 of the judgment.

7. Still not satisfied with the judgments and decrees of the Courts below, the present appeal has been filed.

8. I have heard Shri Y.K. Sharma, Advocate, on behalf of the learned counsel for the appellant. No assistance has been given on behalf of the respondent and with the assistance of the counsel for the appellant I am disposing of this appeal.

9. The case set up by the plaintiff was that he was the owner and in possession of the suit land and defendant is a stranger. Defendant was not inducted on the land in question in any capacity and under the threat of an entry of Khasra Gidawari he wants to disturb the possession of the plaintiff. It is a suit for injunction and in these circumstances, we have to see who is established possession on the date of the institution of the suit. In a suit of injunction the question of title may not be of much importance but any way the finding of title has gone in favour of the plaintiff.

The suit was instituted on 23.11.1976 and we have to see on this date who was in established possession of the suit land. I have gone through both the judgments and in my opinion both the Courts below had fallen in error in not rightly appreciating the law and the facts. Even the evidence which has been produced by the parties has not been properly incorporated and that is the reason that this Court is inclined to accept this appeal. I have just said that this is a suit for injunction instituted on 23.11.1976. In these circumstances, we have to see who was in established possession on the date of the institution of the suit. The relevant entries of the revenue record would be Kharif 1976 and earlier to that Ex.P1 is the jamabandi for the year 1970-71 which clearly established that Shri Dalip Singh plaintiff was the owner and he was in possession of the land measuring 4 kanals and 14 marlas forming Rectangle No. 16/26. There is a presumption of correctness under Section 44 of the Land Revenue Act with regard to the Jambandis. Thus, a reasonable presumption can be drawn that Shri Dalip Singh was in possession of the suit land as per jambandi for the year 1970-71. The next document is Khasra Girdawari Ex.P.2 starting from Kharif 1971 upto Rabi 1976. In the column of cultivation this land throughout remained in the possession of Shri Dalip Singh plaintiff. Thus, again it can be said that Ex.P.2 is an admissible piece of evidence and the possession of Shri Dalip Singh has been shown consistently right from 1971 upto Rabi 1976 i.e. upto 24.3.1976 when the rabi entry was recorded by the Revenue Patwari in the revenue record. The 'dispute arises with effect from 18.10.1976 as per Khasra Girdawari. Through this entry the possession of Shri Hoshiara has been shown in part of the area i.e. 1 kanal 14 marlas out of the total area of 4 kanals and 14 marlas. Ex.P-4 is the Jamabandi for the year 1961-62 which again establishes the possession and ownership of Shri Dalip Singh. Ex.P.5 is the Jamabandi for the year 1965-66 in which Dalip Singh has been recorded as owner and the land in dispute has been shown in his possession. As stated above, the dispute arises with effect from 18.10.1976 when for the first time the entry of possession has been changed in the name of the defendant and that too with regard to 1 kanal and 14 marlas. The law by this time is well settled that if the revenue officer was to change the Khasra Girdawari and wants to deviate from the previous Khasra Girdawari in the name of a particular person, such change should be not occur without giving notice to the person who

was in earlier established possession. The document Ex.D.I which is Khasra Girdawari and the Rapat D-2, do not indicate that before the change of Khasra Girdawari in the name of the defendant with respect to 1 kanal and 14 marlas any notice was given to the plaintiff. If the Patwari has changed the Khasra Girdawari at the back of the plaintiff such entry is not binding upon the plaintiff and he can always ignore such entry. To this extent, the reliance can be placed on 1976 P.L.J. 26, Amal Kumar and others v. Bhupinder Singh and others, wherein para No. 4 of the judgment, it has been held as follows:-

'I have heard the contention of the learned counsel for the appellants at length but do not find sufficient reasons for disagreeing with the conclusions arrived at by the Courts below. No doubt, Khasra Girdawari is admissible into evidence as it is prepared by a public officer in the discharge of public duties but no presumption of truth is attached to it. The evidentiary value of the Khasra Girdawari can be rebutted by other evidence. The circumstances in the present case are such that no reliance can be placed on the Khasra Girdawaris relating to Kharif 1967 and Rabi 1968. Amal Kumar plaintiff appeared as his own witness and deposed that the appellants had been cultivating the land as tenants since 1960. In Khasra Girdawaris upto Rabi 1967, the land in dispute has been shown in self-cultivation of the landowner. It has not been stated as to why those entries existed for such a long time. No independent witness has been produced from the village to prove that they have been in possession of the land since 1960 as tenants. He (plaintiff No. 1) also deposed that the appellants had been paying batai to Shrimati Charo Shila, the vendor. No receipt has been produced by the appellants to prove that they had been paying rent either in cash or in kind to the landowner. No rent deed has been produced to prove that relationship of landlord and tenant existed between Shrimati Charo Shila and the appellants. The Khasra Girdawari on which reliance has been placed by the appellants is in contradiction to the statement of the plaintiff-appellant. The right of pre-emption is a particle right and in order to succeed, the plaintiff has to prove that his case squarely falls within the purview of the Punjab pre-emption Act. In the present case, it was upon the appellants to prove beyond shadow of doubt that they had been tenants on the land in dispute on the date of sale. The plaintiff-appellant No. 1 in his statement has admitted that he had been carrying on the business of pumping sets at Karnal for the last four or

five years. This statement was recorded on May 2, 1969. This portion of the statement shows that appellant No. 1 was tilling the land as he was doing business at Karnal. No independent witness has been produced that the appellants had been cultivating the land in Kharif 1967 and Rabi 1968. The learned counsel for the appellants had laid great stress on the fact that the instruction issued by the Financial Commissioner for making changes in the entries in the Khasra Girdawari should not have been taken into consideration by the first appellate Court in deciding the appeal. The entry of tenancy in some of the Khasra numbers was made for the first time in Kharif 1967 and regarding the other Khasra numbers, it was made in Rabi 1968. The Financial Commissioner has prescribed the mode for effecting changes in the existing Khasra Girdawaris.

According to the instructions, it is the duty of the Patwari before making any change in the existing entry at the time of harvest inspection, to notify in writing the person or persons likely to be adversely affected by such a change of the entries and retain on record proof of the notifications. Further the changes so made should be attested by the Lambardar or the Panch of the village. It is further stated in the instructions that entries made in violation of the said instructions shall be treated null and void at the time of attestation of the Jamabandi or at an earlier stage. Under Section 11 of the [Punjab Land Revenue Act, 1887](#), the Financial Commissioner had the general power of superintendence and control over all Revenue Officer and in that capacity, he has got a right to issue such instructions. In this view, I am supported by a decision of this Court in *S. Mohan Singh v. The Financial Commissioner, Revenue, Punjab and Ors.*, (1967)69 P.L.R. 377, wherein, it has been observed that the standing orders can be issued because of the general power of superintendence granted to the Financial Commissioner under Section 11 of the Land Revenue Act. These instructions have been issued to put a curb on the unrestricted powers of the Patwaris to manipulate the Khasra Girdawari in the way they desire. It was the duty of the Patwaris before changing the Khasra Girdawari and making an entry in favour of the appellants to have informed the landowners so that they could come and contest the new entry, which was to be made by him, if they so desired. There are other circumstances which go to show that the entries in Khasra Girdawaris made by the Patwari do not depict the true state of affairs.

The transaction of sale took place in January, 1968, whereas the change in the Khasra Girdawari was made, for the first time, in the Kharif 1967. It is not that the entries in favour of the appellants were made long before the transaction of sale took place. The learned counsel for the appellants has placed reliance on the observations of A.D. Koshal, J., in *Khiali Ram etc. v. Sant Lal*, 1972 Current Law Journal 402 : 1972 P.L.J. 118, wherein it was observed that the Khasra Girdawari entries are the record of the acts of a public servant performed in the discharge of his official duties and therefore, relevant under Section 35 of the Indian Evidence Act. The learned Judge further observed that no presumption of correctness attaches to them but their evidentiary value is not nil, and the Court would be wrong in embarking on an assessment thereof with a presumption that they are not correct or that they cannot be relied upon unless supported by other evidence. It is also observed that the party which asserts that they are false, is at liberty to prove that they fulfil that character, the aforesaid case is distinguishable on facts. In that case, the entries in the Khasra Girdawari were made before the transaction of sale and the learned Judge also placed reliance on the testimony of independent witnesses who supported the entries. The learned Judge in that case has also held that the Court would be justified in rejecting the Khasra Girdawari as unreliable. The learned counsel has also placed reliance on an unreported decision of D.K. Mahajan, J. in *Kardwari v. Vidaya Nand and Ors.*, Regular Second Appeal No. 175 of 1968 decided on August 11, 1972. The learned Judge in that case observed that Khasra Girdawari on which reliance has been placed by the Courts below does not depict the true state of affairs. It is also observed that it is well known that Patwaris manipulate the Khasra Girdawari entries and unless cogent basis is found for a change in the Khasra Girdawari entry, and none has been shown in that case, it must be held that Khasra Girdawari entry relied upon by the counsel for the respondents could not be accepted. I am unable to understand as to how the observations in the case help the appellants. Mr. Dewan has also placed reliance on another unreported judgment of this Court in *Raghubir and Ors. v. Shankar and Ors.*, Regular Second Appeal No. 1282 of 1964 decided by C.G. Suri, J. on May 7, 1971, wherein it has been observed that once the plaintiff is proved to have been a tenant on the land at the time of sale, he could be presumed to have continued to hold that status unless there was something to

show that this status had been lost by him on any one of the crucial dates. There is no dispute about the aforesaid proposition. The appellants in the present case have not proved themselves to be tenants on the date of sale and, therefore, the observations made by the learned Judge are not applicable so far as this question is concerned. The respondents in order to show that the Khasra Girdawari were not entered correctly by the Patwari produced D.W.2 Bimal Chand, D.W.4 Bagga Singh and D.W.5 Bhupinder Singh. They have deposed that the appellants were not in possession of the land in dispute at the time of sale. Their statements have been believed by the trial as well as by the first appellate Court. In my view, the appraisal made by the Courts below of their statements is correct and I do not find sufficient reasons for differing from their conclusions. In view of the aforesaid facts, no reliance can be placed on the Khasra Girdawari entries.'

There is another angle of vision, to look to this appeal. The defendant is relying upon the entry Ex.D. 1, which in the opinion of this court, is only a stray entry and it will not establish the possession of the defendant. Also it is not established by the defendant nor it is his case that he took the possession with respect to the area of 1 kanal and 14 marlas either as a tenant or on Chakota or in any other capacity. The defendant has not been able to establish in what capacity and under what circumstances, he took the possession of the land and how the plaintiff readily gave the possession to him. There is presumption of continuity of possession in favour of the party which has been able to prove its established possession. I have just concluded above the plaintiff was in continuous possession of the entire area measuring 4 Kanals 14 Marias right from 1961 onwards. It does not look sound that on one fine morning the plaintiff gave the possession of some part of the suit land to the defendant. Even the Courts below had held that it is not proved on record that defendant planted the trees at his own level or at the request of the plaintiff. This finding clearly goes against the defendant to suggest that at no point of time he was in possession of the property or part thereof. By misregarding the evidence and by not appreciating the correct position of law, a grave miscarriage of justice has been done to the plaintiff-appellant.

11. Resultantly, I allow this appeal and set aside the judgments and decrees of both the Courts below and decree the suit of the plaintiff as prayed for and restrain

the defendant not to interfere in the possession of the plaintiff who has been able to prove his established possession on the date of the institution of the suit. It is also proved on the record that plaintiff was the owner and in possession of the property on the date of the institution of the suit. There shall be no order as to costs.

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