

Sant Ram Vs. Faquiroo and anr.

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Court : Himachal Pradesh

Decided On : Jun-21-1984

Reported in : AIR1985HP10

Judge : H.S. Thakur, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 100, 100A and 101; ;
[Evidence Act, 1872](#) - Section 35; ;Himachal Pradesh Tenancy and Land Reforms
Act, 1974 - Section 104(4)

Appeal No. : Second Appeal No. 27 of 1983

Appellant : Sant Ram

Respondent : Faquiroo and anr.

Advocate for Def. : A.K. Goel, Adv.

Advocate for Pet/Ap. : Sant Ram, Adv.

Disposition : Appeal allowed

Judgement :

H.S. Thakur, J.

1. The appellant has preferred this second appeal against the decree and judgment passed by the learned Additional District Judge, Solan and Sirmur

Districts, affirming the decree and judgment passed by the Subordinate Judge 1st Class, Nalagarh.

2. A few facts relevant for the decision of the appeal may be stated. The appellant filed a suit for permanent injunction alleging that he was owner in possession of the land in suit and that the respondents were threatening to interfere in his possession. It may be pointed out at the outset that respondent-No. 1 has admitted that he had been dispossessed by the appellant and on that account he has not appeared in the Court to defend the appeal. The appeal is now limited to the dispute between the appellant and respondent No. 2, Shri Bachan Singh. The suit was resisted by the respondents on the ground that they were in possession of the land as tenants. The Courts below have come to the conclusion that respondent No. 2 is a tenant of the land in dispute.

3. On the pleadings of the parties, the trial court framed the following issues :

(1) Whether the plaintiff is owner in possession of the suit land? Opp.

(2) Whether the plaintiff is entitled to the relief as prayed for? Opp

(3) Whether the defendant No. 2 is in possession of the suit land as tenant as alleged? OPD

(4) Whether the defendant No. 1 is also in possession as tenant, if issue No. 2 is not proved? OPD

(5) Relief.

4. The main contention of the appellant is that the courts below have wrongly come to the conclusion that respondent No. 2 holds the status of a tenant under the appellant. The appellant has vehemently challenged this finding. It is contended by him that the courts below have overlooked and in fact not considered the relevant entries in the revenue record. It is emphasised by the appellant that there is a presumption of truth attached to the entries in the revenue record and convincing evidence is necessary to be produced to negative the presumption attached to such entries. It is also contended that the courts below

have not even properly appreciated the oral evidence. It is pointed out that the receipts Exs. DA to DC, in token of the payment of rent do not pertain to the land in suit but to a different land. It is contended by Shree A. K. Goel, learned counsel for respondent No. 2, that the courts below have come to a conclusion that respondent No. 2 is the tenant of the land in dispute. On this account, it is contended that there being concurrent finding of fact on this vital question, such a finding cannot be disturbed in second appeal. He has referred to a decision in *Karnail Singh v. Pala Singh*, (1983) 85 Pun LR 567. In this judgment, it has been held that where in a suit for permanent injunction filed by the plaintiff restraining the defendant from interfering with his possession of the suit land had been dismissed by the courts below after concurrently holding that he was never in possession of the suit land, the said finding being a finding of fact based on appreciation of evidence on the record could not be interfered with in second appeal. Mr. Goel has also drawn my attention to a decision in *Pandurang Jivaji v. Ramchandra Gangadhar* AIR 1981 SC 2235. Their Lordships of the Supreme Court in this judgment have observed that the findings of fact recorded by the two courts below are final and cannot be normally set aside by the second appellate court. He has further referred to Section 104, Sub-section (4) of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. It is provided under the said Section that whenever a dispute arises whether a person cultivating land of a landowner is tenant or not, the burden of proving that such a person is not a tenant of the land owner shall be on the latter.

5. A perusal of the judgments of the courts below shows that they have not referred to the revenue entries as contained in Ex. P. 1 (jamabandi for the year 1974-75) and Ex. P. 2 (Khasra-girdawari). It may be clarified that entries in jamabandi fall within the zone of record-of-rights and a presumption of truth is attached thereto, whereas entries in Khasra-girdawari do not fall within the description of record-of-rights but they constitute a relevant fact under Section 35 of the Evidence Act, since they are recorded by a public servant in the discharge of his official duty. So far as Section 104, Sub-section (4) of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 is concerned, the same shall only apply if it is definitely proved that a person is cultivating land of a landowner which fact can reasonably be ascertained from the entries in the revenue record. These entries

show the appellant as an owner in possession of the land in dispute. In this background, the other evidence on record has to be examined whether the said entries have been properly rebutted or not. The appellant has examined P. W. 1 Shri Kartar Singh, who is a lambardar. He has stated that the appellant is the owner with possession of the land in dispute. In his cross-examination, he has stated that the appellant keeps on going to Delhi and his mother cultivates the land. He has, however, stated that since one year he is not keeping bullocks. He has further asserted that his mother was keeping bullocks and she used to get the land cultivated through a servant. P. W. 2 is Shri Sunder, who is also a Lambardar of the area in which the land in dispute is situated. He has stated that the said land is within his 'Patti' and that he collects the land revenue. He has affirmed that the appellant is in possession of the land in dispute as an owner. He has also stated that Girdawari entries are made on the spot and the respondents have been present at the time of Girdawari and that they never objected regarding the entries incorporated in Khasra-girdawari. In cross-examination, it has been stated by the witness that a statement recorded by Shri Lal Singh, Kanungo had been made by him but the same related to 'Shamlat' area. P. W. 3 is Shri Gulzar. It is stated by him that the land in dispute is 5 bighas and 2 biswas and the appellant is owner with possession of the same. He has further stated that Bachan has no connection with this land. It is pointed out by him that the mother of the appellant was keeping a servant and bullocks. It is further stated by him that the Patwari makes entries at the time of Girdawari. P. W. 4 is the appellant himself. He has stated that the land in dispute measures 5 bighas and 2 biswas and that he is the owner with possession of the same. It is also stated by him that Girdawari entries are made on the spot. It is further pointed out by him that Bachan has been threatening him to forcibly dispossess him from the land. In cross-examination, he has denied that since 1969, he has given this land on 'Chakauta' to Shri Bachan. It is also denied by him that he ever received 'batai' from Bachan in respect of the land in dispute. He has admitted that receipts Exs. DA to DC have been written by him. However, according to him, these receipts do not pertain to the land in dispute but to a different land.

6. The respondent No, 1 Faquiroo has also appeared as his own witness. It is stated by him that he had been cultivating the land in dispute and used to pay Rs.

200/- as Theka'. In his cross-examination, he has stated that about 40/50 maunds of grain in the land in dispute was produced on each crop. He has further admitted that this land is now being cultivated by the appellant and he had left the possession of the same some 4/5 years back. According to him, he used to have three crops each year from this land. In his opinion, the 'Chakauta' of this land should be Rs. 800/-. D. W. 2 is Shri Bachan Singh respondent No. 2. According to him, the land in dispute is in his possession for the last about 8/9 years. It is pertinent to point out that his statement was recorded on 23rd June, 1978. According to him the 'Chakauta' of the land was Rs. 100/- per year. It is asserted by him that he had taken receipt of 'Chakauta'. from the appellant. The receipts are marked as Ex. DA, DB and DC. He has stated, that he filed an application for the correction of entries of khasra-girdawari. In his cross-examination, it is admitted by him that the appellant used to issue receipts and he never refused to do so. He has denied the suggestion that the receipts do not pertain to the land in suit, it is admitted by him that the receipts are for Rs. 50A per year. He has also denied that the land in dispute is irrigated. It is further denied by him that the land in suit was in possession of Faquiroo. D. W. 3 is Shri Hari Singh, who has stated that respondent No. 2 used to cultivate the land in dispute for 8/9 years. He has admitted that he was not a summoned witness. He. has further admitted that the plaintiff owns no other land except for the land in suit. D. W. 4 is Shri Hazaru Ram. He has only stated that respondent No. 2 is in possession of the land in dispute as tenant and that he used to pay 'batai' to the plaintiff and his mother. In his cross-examination, he has stated that the Girdawari of fields was got done by him and also by others. The appellant has appeared as P. W. 6 in rebuttal. Besides other facts, it has been stated by him that the receipts EXS. DA to DC relate to the land of Shri Budhi Singh from whom he had taken the land on contract basis and further gave the same on contract basis to the defendant. According to him, the report of the Kanungo is wrong and fabricated. Shri Budhi Singh has also appeared as P. W. 5 in rebuttal. It is stated by him that he is the Lambardar and knows the appellant. It is further stated by him that he gave about 21/2 bighas of land to the appellant at the rate of Rs. 40/- per year and that the appellant further gave the same on 'Chakauta' to respondent No. 2. According to him the land in suit is in possession of the appellant. He has specifically stated that Exs. DA, DB and DC

relate to his land and not to the land in dispute.

7. As pointed out earlier above, respondent No. 2 Bachan Singh stated on 23rd June, 1978 that the land in dispute had been in his possession for the last 8/9 years. As such, according to him, he has been in possession of the land since the year 1969 or 1970. The appellant has placed on record copy of jamabandi for the year 1974-75 pertaining to the land in dispute. According to the entries therein, the appellant is shown as owner with possession. The area of the land is entered as 5 bighas and 2 biswas. In the relevant column, the land in dispute is shown as irrigated one. Ex. P. 2 is a copy of Khasra-girdawari for Kharif 1975 and Rabi 1976. The appellant therein is also shown as an owner with possession of the said land. It is also mentioned that the area is irrigated one. Exs. DE and DF have also been placed on record. Ex. DE is a receipt issued by the appellant in favour of Shri Faquiroo respondent No. 1. It is dated 8th Nov. 1969 and a sum of Rs. 200/- has been received by the appellant as 'Chakauta' of the land at Jhajra. Similarly, Ex. DF is also a receipt in the sum of Rs. 200/- issued by the appellant in favour of Shri Faquiroo respondent No. 1 regarding 'Chakauta' of the land in Jhajra. The receipt is dated 5th June, 1970.

8. I have considered the entire evidence on record. As pointed out earlier above, in the jamabandi for the year 1974-75, the appellant is shown as an owner in possession of the land in dispute. In Ex. P. 2, Khasra girdawari, again the appellant is shown as an owner in possession of the suit land. It is in evidence that respondent No. 1 Faquiroo had been paying 'Chakauta' to the appellant at the rate of Rs. 200/-. It is, however, stated by him that he had given up the possession of the land some years back. The appellant had filed a suit in the trial court during the year 1976. The respondent No. 1 in his statement recorded on 28th May, 1978, has specifically stated that he gave up the possession of the land some 4/5 years back. Shri Budhi Singh PW has specifically stated that he gave his land on 'Chakauta' at the rate of Rs. 40/- to the appellant and that the appellant further gave the same to respondent No. 2 at the rate of Rs. 50/- as 'Chakauta'. I am satisfied that the receipts Exs. DA, DB and DC relate to the land which was taken on 'Chakauta' by the appellant from Shri Budhi Singh and further gave the same on 'Chakauta' to respondent No. 2. A perusal of the receipts Exs. DA to DC shows

that the description of the land in respect of which the said receipts were issued is not given, whereas in the receipts issued to respondent No. 1, the description of the land has been given. Respondent No. 2 in his statement has asserted that the land in dispute is not irrigated one. This assertion is completely falsified by the entries in the revenue record.

9. Looking at the evidence on record, I am convinced that the courts below have failed to take into consideration the entries as reflected in Exs. P.1 and P.2 (jamabandi for the year 1974-75 and Khasra-girdawari for Kharif 1975 and Rabi 1976). It is settled law that presumption of truth is attached to the entries in the revenue record and to rebut such a presumption convincing and reliable evidence is required. A perusal of the oral evidence also produced by the parties shows that the evidence produced by the appellant is more convincing than the evidence produced by the respondents. At the same, assuming that even if the oral evidence is evenly balanced, the reliance has to be placed on the entries in the revenue record. I have no hesitation in observing that the courts below have not considered the evidence on record in accordance with the settled principles of the appreciation of evidence. In fact, the entries in the revenue record have been kept out of consideration while coming to the conclusion that respondent No. 2 is a tenant of the land in dispute. It may be pointed out that it is the official duty of the revenue officials to make entries at the time of the inspection of crops, in the Khasra-girdawari. The respondents have not produced any such entries. On the contrary, Exs: P. 1 and P.2 apparently show that the appellant has been in possession of the land in dispute. The respondent No. 2 has produced receipts Exs. DA, DB and DC in token of the alleged payment of 'Chakauta' at the rate of Rs. 507/-. In the said receipts, the description of the land has not been given. As pointed out earlier above, the respondent No. 1 has stated that he was paying 'Chakauta' of Rs. 200/-whereas, according to him, the 'Chakauta' should have been Rs. 800/-. If it is so, it cannot be believed that the appellant could have given the land in dispute to respondent No. 2 on a 'Chakauta' of Rs. 507- only.

10. The net result of the above discussion is 'that the appellant is in possession as an owner of the land in dispute and the respondent No. 2 is not settled as a tenant of the said land. From the facts and circumstances as they appear from the record,

respondent No. 2 has been most probably threatening the appellant to take forcible possession of the land in dispute on the basis of the alleged receipts Exs, DA, DB and DC, under the pretext that the said receipts related to the land in dispute. As such, the appellant is entitled to the relief of injunction as prayed for by him.

11. It is desirable to consider the contention of Mr. A. K. Goel, learned counsel for respondent No. 2, that this Court may not disturb the concurrent finding of both the courts below that the respondent No. 2 is a tenant of the land in dispute. It is true that normally this Court will not in second appeal disturb a concurrent finding of fact. However, I am of the view that where the lower court ignores material evidence with respect to the fact in issue, its finding can be interfered with even in second appeal. As pointed out earlier above, the courts below have completely ignored the entries in the revenue record which carry the presumption of truth. Such a presumption has not been rebutted by the respondent.

12. In the alternative, it is contended by Mr. Goel that in case the courts below have failed to consider the material evidence, it is in the interest of justice that the matter be remanded to the trial court for fresh decision with a direction that the evidentiary value of the entries in the revenue record be considered. I am not inclined to agree to this suggestion. The parties have led their evidence and the same has been thoroughly considered by me.

13. In view of the foregoing discussion and reasons, I have no alternative but to set aside the decree and judgment passed by the lower appellate court affirming the decree and judgment of the trial Court and to allow the appeal with costs. Consequently, the appeal is allowed with costs and the suit as filed by the appellant plaintiff is decreed.