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**(2009) 12 P&H CK 0125**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 677 of 2003

Mohinder Singh

APPELLANT

Vs

Shamsher Singh

RESPONDENT

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**Date of Decision:** Dec. 1, 2009

**Acts Referred:**

- Punjab Consolidation Act, 1948 - Section 42

**Citation:** (2010) 2 CivCC 656 : (2010) 2 RCR(Civil) 505

**Hon'ble Judges:** Sham Sunder, J

**Bench:** Single Bench

**Advocate:** Munishwar Puri, for the Appellant; P.S. Kang, for the Respondents No. 1 to 6, Mr. T.P. Singh, for the Respondent No. 7, for the Respondent

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**Judgement**

Sham Sunder, J.

This appeal, is directed, against the judgment and decree, dated 13.03.2001, rendered by the Court of Civil Judge (Junior Division), Rupnagar, vide which, it decreed the suit of the plaintiffs, and, the judgment and decree, dated 17.05.2002, rendered by the Court of Additional District Judge, Rupnagar, vide which, it dismissed the appeal.

2. The facts, in brief, are that, the plaintiff, as per the policy of the Punjab Government, being belonging to the Scheduled Caste Category, was allotted 5 acres of land, equal to 25B-6B, in village Gharispur and Bara Surtapur, near Surapur Farm, vide order dated 12.12.1972. The consolidation proceedings, took place, in village Gharispur and Bara Surtapurk. As per jamabandi, for the year 1990-91, the land, measuring 11 kanals 9 marlas, bearing khasra Nos.20/20,21/1,29, and 21, in the area of Gharispur, was also allotted, to the plaintiff, and, as such, total land, measuring 36 kanals 15 marlas, was allotted, to him, though, he was entitled to 42 kanals 3 marlas. It was stated that the land, bearing khasra No.20/19/2 and 22/1, which was in possession of the plaintiff, was illegally and wrongly allotted, to

defendant No. 1. Plaintiff, filed a petition, u/s 42 of the Punjab Consolidation Act, 1948, before the Additional Director Consolidation, Punjab, Mohali, which was allowed, in his favour. It was further stated that feeling aggrieved, defendant No.1, filed a Writ Petition, before this Court, which was dismissed, on 05.10.1995, confirming the order of the Additional Director Consolidation, Mohali, Punjab. It was further stated that, as such, the plaintiff, became the owner of the land, in dispute. It was further stated that, vide conveyance deed No.2287 dated 18.10.1995, registered, on 26.10.1995, defendant No.2, allotted the land, in dispute, to defendant No. 1. It was further stated that the matter, had already been decided upto this Court, and no appeal, against its order, was filed. It was further stated that the conveyance deed, was illegal. The defendants, were many a time, asked to treat the conveyance deed, as illegal, null and void, but to no avail. Ultimately, a suit for declaration and permanent injunction, was filed.

3. Defendant No. 1/appellant, put in appearance, and filed written statement, wherein, he took up various objections, and contested the suit. It was pleaded that the suit was not maintainable, as the plaintiff never came into possession of the land, in dispute. It was further stated that, in fact, defendant No.1, is in possession of the land, in dispute. It was further stated that the land, in dispute, was never allotted, to the plaintiff. It was further stated that defendant No. 1, spent huge amount, for improving the land, in dispute. It was further stated that the Additional Director, Consolidation, had no jurisdiction, to decide the fate of the land, in dispute. It was further stated that the land, in dispute, was sold by defendant No.2, in favour of defendant No. 1, vide registered sale deed. The remaining averments, were denied, being wrong.

4. On the pleadings of the parties, the following issues were struck:-

(i) Whether the impugned conveyance deed dated 18.10.1995 is illegal, null and void and as such inoperative against the plaintiff qua the disputed land as alleged? OPP

(ii) Whether the plaintiff is entitled to the relief of permanent prohibitory injunction as claimed through this suit against the defendant? OPP

(iii) Is this suit not maintainable? OPD

(iv) Whether plaintiff has no locus standi to file the suit? OPD

(v) Whether this Court has no jurisdiction to entertain and try this suit? OPD

(vi) Relief.

5. After hearing the Counsel for the parties, and, on going through the record of the case, the trial Court, decreed the suit of the plaintiffs.

6. Feeling aggrieved, an appeal was preferred, by the defendant/appellant, which was dismissed, by the Court of Additional District Judge, Rupnagar, vide judgment and decree dated 17.05.2002.

7. Still feeling dissatisfied, the instant Regular Second Appeal, has been filed by the defendant/appellant.

8. I have heard the Counsel for the parties, and have gone through the evidence, and record of the case, carefully.

9. The following substantial question of law arises, in this appeal, for the determination of this Court:-

Whether the Courts below, recorded perverse findings, that the suit filed by Lachhman Singh, plaintiff (deceased) now represented by his legal representatives, for declaration, without seeking possession, was maintainable?

10. The Counsel for the appellant, submitted that neither Lachhman Singh, nor his legal representatives, ever came into possession, over the property, in dispute. He further submitted that, even at the time of filing the suit, Lachhman Singh, plaintiff (now deceased), was not in possession of the property, in dispute. He further submitted that, Lachhman Singh, only filed a suit for declaration, but, did not seek any relief of possession. He further submitted that, according to Section 42 of the Specific Relief Act, 1963, the suit for mere declaration, was not maintainable. He further submitted that the Courts below, recorded perverse findings, that the suit, was maintainable, even without seeking a relief for possession, by the plaintiff (now deceased). He further submitted that the judgments and decrees of the Courts below, being illegal, on this ground alone, were liable to be set aside.

11. On the other hand, the Counsel for the respondents, submitted that the respondents, were in possession of the property, in dispute, and, as such, they only sought a relief for declaration. They further submitted that, under these circumstances, the suit for declaration alone, was maintainable, in respect of the land, in dispute. They further submitted that the Courts below, were right, in holding so. They further submitted that the judgments and decrees of the Courts below, being legal and valid, were liable to be upheld.

12. After giving my thoughtful consideration, to the rival contentions, advanced by the Counsel for the parties, in my considered opinion, the appeal is liable to be accepted, for the reasons to be recorded, hereinafter. It is, no doubt, true that, this Court, in the Regular Second Appeal, cannot interfere, with the concurrent findings of fact, recorded by the Courts below, until and unless, it comes to the conclusion, that the same, are the result of complete misreading and mis-appreciation of evidence, and law, on the point. The dispute, in this case, was only, with regard to khasra Nos.20//19/2(0-8) and 20//22/1 (4-12). The oral evidence, with regard to possession of this property, was hardly of any consequence, because the land, in dispute, is agricultural, in nature. The plaintiffs, tendered into evidence Pljamabandi, for the year 1991-92. According to this jamabandi, Lachhman Singh, plaintiff (now deceased), has been shown, to be in possession of khasra Nos. 19/20, 21 /1,29, and 121. He is not shown, to be in possession of khasra Nos.20/19/2 and 20/22/1. In

jamabandi P2, for the year 1990-91, Lachhman Singh, plaintiff (now deceased), was shown, to be in possession of khasra Nos.20/12/2, 13/2, 18/1, and 19/1. As per this jamabandi, he was not shown, to be in possession of khasra Nos.20/19/2 and 20/22/1, in dispute. It is evident, from jamabandi, exhibit DI 3, for the year 1981-82, that Mohinder Singh, defendant/appellant, has been shown, to be in possession of khasra No. 19/2 (0-8). It is further evident, from jamabandi, for the year 1985-86, that Mohinder Singh, defendant/appellant, has been recorded, to be in possession of khasra No.19/2 (0-8). In the jamabandi, for the year 1990-91, Mohinder Singh son of Gurbax Singh, defendant/appellant, has been shown, to be in possession of khasra Nos.20/22/1 (7-12), and 19/2 (0-8), alongwith the other khasra numbers. Similarly, in the jamabandi, for the year 1995-96, exhibit D6, Mohinder Singh, defendant/appellant, has been shown, to be in possession of khasra Nos.20/22/1 (7-12) and 19/2 (0-8). From the jamabandis, referred to above, Mohinder Singh, defendant/appellant, was found to be in possession of khasra Nos.20/19/2, and 20/22/1, which is the land, in dispute, upto the filing of the suit. The suit, was filed, on 03.01.1996. Mohinder Singh, defendant/ appellant, was in possession of the land, in dispute, upto the filing of the suit, and, there is nothing, on the record, that he was dispossessed therefrom, in accordance with the provisions of law, or he delivered the possession thereof, in favour of Lachhman Singh, plaintiff (now deceased). Once, he was found to be in possession of the land, in dispute, it could be presumed that he continued to be in possession thereof, until proved otherwise. The entries, contained in the jamabandis, carry a presumption of truth, until contrary, is proved. No doubt, the presumption, is rebuttable, but, no cogent and convincing evidence, was produced, by the plaintiff (now deceased), to rebut the same. Had Lachhman Singh, been in possession of the land, in dispute, he would have been recorded, to be so, in the aforesaid revenue record. The Courts below, were thus, wrong in holding, that Lachhman Singh, plaintiff (now deceased), was in possession of the land, in dispute. The findings of the Courts below, in this regard, being perverse, are liable to be reversed.

13. The next question, that arises for consideration is, as to whether, in these circumstances, the suit of the plaintiff for mere declaration, was maintainable. In [Ram Saran and Another Vs. Smt. Ganga Devi](#), the principle of law, laid down, was to the effect, that where the defendant is in possession of some of the suit properties, and the plaintiff, in his suit, does not seek possession of those properties, but merely claims a declaration, that he is the owner of the suit properties, the suit is not maintainable, being hit by the provisions of Section 42 of the Specific Relief Act, 1963. In [S. Bhagat Singh Vs. Satnam Transport Co. Ltd. and Others](#), , the principle of law, laid down, was to the effect that, in the absence of seeking further relief of possession, the suit for declaration, was not maintainable. The principle of law, laid down, in the aforesaid cases, is fully applicable, to the facts of the instant case. The Courts below, thus, recorded perverse findings, that the suit for mere declaration, without seeking further relief of possession, was maintainable. The findings of the

Courts below, in this regard, being perverse, are liable to be reversed.

14. The concurrent findings of fact, recorded by the Courts below, that the suit, 1 was maintainable, without seeking further relief of possession, being not based, on the correct reading and due appreciation of evidence, and law, on the point, suffer from illegality and perversity, warranting the interference of this Court; The judgments and decrees of the Courts below, are liable to be set aside.

15. The substantial question of law, depicted above, is answered, in favour of the appellant.

16. For the reasons recorded above, the instant Regular Second Appeal, is accepted, with no order, as to costs. The judgments and decrees of the Courts below, are set aside. The suit of the plaintiff, is dismissed only, on the ground of being not maintainable, in view of the provisions of Section 42 of the Specific Relief Act, 1963.