IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2782-2011 (O&M)
Reserved on: 20.03.2025
Pronouncement on: 02.04.2025

Prithi & Others

...Appellant(s)

Vs.

Satya Narain

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. SK Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate
Mr. Sourabh Sheoran, Advocate
Ms. Chetna Rao, Advocate
for the appellants.

Mr. Vikram Singh Punia, Advocate
Mr. Amit Siwach, Advocate
Ms. Yashasvi Rana, Advocate
for the respondent.

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NIDHI GUPTA, J.

CM-11704-CII-2011

This is an application under Section 151 CPC on behalf of the appellants for exemption from filing certified copies of Annexures A1 to A4, A6, A17 to A19 (wrongly written as P1 to P4, P6, P17 to P19) forming part of trial Court and Appellate Court record.

After going through the contents of the application, which is supported by affidavit, the same is allowed subject to all just exceptions and Annexures A1 to A4, A6, A17 to A19 are taken on record.

CM-11705-CII-2011

This is an application under Section 151 CPC on behalf of the appellants for permission to file additional documents.

After going through the contents of the application, which is supported by affidavit, the same is allowed subject to all just exceptions and additional documents i.e. A1 to A19 are taken on record.

MAIN CASE

The defendants are in second appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the respondent/plaintiff for permanent injunction has been decreed by both the Courts below.

2. Brief facts of the case are that the plaintiff had filed a suit seeking decree of permanent injunction restraining the defendants from interfering in the cultivating possession of the plaintiff over the suit land comprised in Khewat No. 170/164 Min rect. And Killa Nos. 145/6/2(1-5), 15(7-12), 16(4-0), 17(8- 0), 18/ 1(7-0) and Khewat No.253/242 Min. rect. and Killa No.72/14(8-0) measuring 35 K-17M situated within the revenue estate of village Mohana, Tehsil and District Sonepat. The case as set out in the plaint was that Risala- father of the plaintiff as well as the three defendants - was in cultivating possession of the suit land. Risala had died on 29.12.1998. During his lifetime, he had divided his self-acquired property amongst the plaintiff and the defendants. He had retained the suit land for his maintenance. As Risala was living with the plaintiff and as the plaintiff was maintaining and serving Risala, Risala had relinquished his cultivating possession pertaining to the suit property in favour of the plaintiff in the year 1996; and put the plaintiff in possession of the same. It was the pleaded case of the plaintiff that since the rabi crop of 1996-97, the plaintiff

has been in cultivating possession of the suit land. However, of late the defendants had started claiming their rights over the suit land even though the plaintiff had requested them many times to admit his claim over the suit property, but they refused to do so. Hence, present suit was filed on 16.7.1999.

3. Upon notice, the defendants had appeared and filed written statement resisting the suit.Besides formal objections, the defendants had stated that Risala was co-sharer of the suit land. The cultivating position of the suit land was with all the defendants and not with the plaintiff alone. After the death of Risala on 29.12.1998, the parties were co-sharer in possession of the suit land. It was further stated in the written statement that Risala had given 1/4th share out of his entire holding to the parties to the suit.It was contended that Risala was living with the defendants as well as the plaintiff and he was happy with the service of the defendants and had therefore relinquished his cultivating right in the land in favour of the defendants as well as the plaintiff. It was accordingly averred that the plaintiff alone was not entitled to claim exclusive possession over the suit land. Accordingly, dismissal of the suit was prayed for.

4. Replication was filed.

5. On the basis of pleadings of the parties, following issues were framed by the learned trial Court:-

> *"1. Whether the plaintiff is in possession of the suit land to the exclusion of the defendants? OPP.*

2. Whether the plaintiff is entitled to relief of Permanent Injunction? OPP.

3. Whether the defendants are in joint possession of the suit land as co-sharers? OPP.

4. Relief."

6. On the basis of oral & documentary evidence adduced by the parties, the learned trial Court decided issues No.1 and 2 in favour of the plaintiff; and issue No.3 against the defendants; and accordingly, vide judgment and decree dated 16.02.2010, the suit of the plaintiff was decreed, thereby restraining the defendants from interfering in the cultivating possession of the plaintiff over the suit land. The appeal filed by the defendants was dismissed by the District Judge, Sonipat vide judgment and decree dated 21.04.2011 thereby affirming the judgment and decree of the ld. trial Court. Hence, present second appeal by the defendants.

7. Learned Senior Counsel appearing on behalf of the appellants/defendants inter alia submits that the claim of the plaintiff is made out to be false, as, he has claimed exclusive possession over the suit land through different sources. It is submitted that at one stage, plaintiff has claimed that he had been granted possession over the suit land through Rapat Roznamcha of 1996; at another place, he has claimed possession over the suit land through a Will of Risala. It is submitted that therefore, the plaintiff at different times, at different places, has given contradictory versions regarding his possession over the suit land; all of

which are in fact, untrue, as borne out from the ample evidence on record.

8. Ld. Senior Counsel further submits that the mala fide intent of the plaintiff in seeking possession of the suit land to the exclusion of the defendants, is clear from the fact that the revenue entries were first got illegally changed at the back of the defendants. Further, when the defendants had filed application dated 11.05.1999 for correction of Khasra Girdawari in which notice was duly issued to the plaintiff, the plaintiff with mala fide intent had filed the present suit on 16.07.1999. Despite this, from cross-examination of the defendant no.3 (Annexure A7), it is clear that no suggestion was put by the plaintiff regarding filing of the application by the defendant for correction of Khasra Girdawari.

9. Learned Senior Counsel further points out that there are categoric findings of the Revenue Authorities on record that the defendants were in cultivating possession of the suit land as per their share. These findings have been received after conducting spot inspection twice, and after associating both the parties as well as respectables of the village. It is contended that even though these facts were brought to the notice of the learned Courts below, the same have been discarded on the spurious and flimsy ground that the said documents/revenue orders "*came into existence after initiation of the present suit on 16.7.1999.*" It is submitted that the said reasoning of the learned Courts below is untenable as the learned Courts below have lost sight of the fact that the

application for correction of revenue entries was made by the defendants on 11.05.1999 which is prior to initiation of the suit on 16.07.1999. In this situation, there was no occasion for the Courts below to have decreed the suit of the plaintiff.

10. Learned Senior Counsel argues that the ownership was given to the 4 brothers. The plaintiff is basing his claim on the alleged Rapat Roznamcha (Ex.P3/Annexure A10). However, as per Section 44 of the Act, no presumption of truth is attached to Rapat Roznamcha. This is especially so as even the concerned Patwari was not examined by the plaintiff to prove the alleged roznamcha on the basis of which the plaintiff has claimed possession over the suit land.

11. Ld. Senior Counsel also submits that each case has its own facts, and the law follows the facts. One additional or different fact may make a world of difference between conclusion of 2 cases. Reliance in this regard can be placed on **JT 2006(6) SC 19, JT 2002 (1) SC, 482 AIR 2010 SC 93 para 40.** It is accordingly prayed that the present appeal be allowed.

12. Per Contra, the ld. counsel for the respondent/plaintiff counters the arguments made on behalf of the defendants by firstly submitting that this appeal has been filed under section 100 of CPC and accordingly substantial questions of law have been framed therein. But substantial questions of law have to be distinguished from a substantial question of fact. And where, from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court

will not be interfered by the High Court in second appeal. In support of his contentions, ld. counsel relies upon judgment of Hon'ble Supreme Court in **"Kashmir Singh Vs. Harnam Singh & Another" Civil Appeal No.1036 of 2002 decided on 03.03.2008,** in which it has been held as under: -

> *"(7) Substantial question of law has to be distinguished from a substantial question of fact.*
> *(8) Where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal."*

13. Learned counsel relies upon another judgment of the Hon'ble Supreme Court in **"Mohan Lal Vs. Nihal Singh" Law Finder Doc ID # 5433,** wherein it is held as under:-

> *"11....There was hardly any scope for the High Court to interfere with the finding of possession concurrently recorded by the Courts below within the limited parameters of section 100 of the Civil Procedure Code. As the second appeal did not involve any substantial question of law the High Court rightly dismissed the same..."*

14. It is, however, simultaneously conceded by learned counsel for the plaintiff that now after the passing of the judgment in **Pankaja Aakshi's** case the framing of questions of law is not required as section 41 of Punjab Courts Act still holds the field in this Court, however the present appeal has not been filed under section 41 but under 100 CPC.

15. It is further submitted that it has been held by this Court in case of **Gurnam Singh & Others Vs. Jagjit Singh Rosha, (P&H) : Law Finder Doc Id # 74883**that correction of Khasra Girdawari entries

during pendency of temporary injunction granted by civil court is not relevant; and civil court is to assess independently the evidence regarding possession adduced by parties before revenue authorities. No final verdict about possession should be given unless the parties have had a full opportunity of examining their entire evidence. Further as per **'Natha Singh Vs. Bikkar Singh' Law Finder Doc ID # 52967,** no presumption of truth attaches to Khasra Girdawari entries. In **Niranjan Singh v. Financial Commissioner, Punjab (Revenue), (P&H) : Law Finder Doc Id # 74258**it was held that the findings of the civil court regarding the status of the contesting respondents being tenants or otherwise will override the findings of the revenue authorities which resulted in the change of entries in the Girdawaris.

16. Ld. Counsel for the plaintiff also refers to the statement in cross-examination of defendant no.3 Ram Chander DW1wherein he admitted qua the fact that their father used to reside with Sat Narain and that in the year 1996 my father had transferred Girdawari of the disputed land in the name of Sat Narain. It is submitted that the said admission cannot be discarded without credible contradictory evidence. However, in the present case no contrary evidence qua the transfer of Girdawari has been adduced by the defendants-appellants. On the other hand, the oral admission of DW1 has been well corroborated by the evidence led by the plaintiff that is Ex.P2 Khasra Girdawari which shows possession of Risala till 1996; from 1997 plaintiff Sat Narain has been shown in possession; and

Ex.P3 Roznamcha of the year 1996-1997 vide which entry in Khasra Girdawari was changed in favour of plaintiff Sat Narain.

17. Ld. Counsel for the plaintiff submits that the learned trial court decided the suit on the basis of issue No.1 to 3 on the basis of the documentary evidence followed by findings in para 15 wherein the discussion has also taken place with regard to Ex.D1 to Ex.D4 (the orders of the revenue authorities i.e. the AC 2nd Grade, copy of inspection report, the collector and the commissioner respectively). With regard to the orders passed by the Financial Commissioner and this Court it is submitted that the same are arising out of the proceedings before the revenue courts. In fact, in the order of the learned Financial Commissioner dated 29.09.2008 (Annexure A-17) in para 5 it has been noticed that the plaintiff Satya Narain remained absent at the time of carrying out spot inspection on 16.08.2004.

18. It is further submitted that in fact both the courts below have taken into consideration the evidence led by the plaintiff in a holistic manner. In doing so the Nakal Rapat Roznmacha Vakayati Ex.P3 dated 03.10.1996 (Annexure A-10) clearly established the factum of change of Khasra Girdawari in favour of the plaintiff Sat Narain by his father Risala.

19. It is submitted that the findings of facts arrived at by the Ld. Trial Court have also been affirmed by the 1st Appellate Court. The Ld. 1st Appellate Court has also taken into consideration the documentary evidence adduced by the plaintiff in order to establish his exclusive

possession. The ld. first appellate court has also held that any change made in Khasra girdawaris when litigation among the parties is pending before a civil court is not binding on the civil court. It has also rightly held that admission of a party against its interest is of great significance. Therefore, the said admission cannot in any manner be termed as a stray statement.

20. In this regard reliance has been placed upon a 3-Judge Bench judgment of the Hon'ble Supreme Court in **Biswanath Prasad Vs. Dwarka Prasad, (1974) 1 SCC 78** wherein it is held that admissions are substantive evidence by themselves, though they are not conclusive proof of the matters admitted. Admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness-box or not and whether he was confronted with these statements in case he made a statement contrary to these admissions. The Court further said that admissions are usually telling against the maker unless reasonably explained, and no acceptable ground to extricate the appellants from the effect of their own earlier statements has been made out.

21. In rebuttal, learned Senior Counsel for the appellants submits that the facts of each case are different. The law in order to ensure equitable justice between the parties has to follow the facts. Learned Senior Counsel submits that no doubt, any change made in Khasra Girdawari entries when litigation is pending between the parties before a Civil Court, is not binding on the Civil Court. However, in the present case, it is not disputed that the application of the defendants was

prior in time to the filing of the suit by the plaintiff. Moreover, the revenue entries were changed only after duly carrying out spot inspection twice over in the revenue proceedings. In the civil proceedings, the land was not inspected. Even further, the Rapat Roznamcha is not proved on file. While issuing Rapat Roznamcha, notice was not issued to Risala. Even concerned Patwari was not examined to prove the Rapat Roznamcha. It is contended that from the above facts, it can be inferred that fraud has been committed by the plaintiff; and that in the above factual scenario, findings of both the Courts below are perverse. It is further argued that in deciding the rights of the parties, the learned Courts below could not have ignored the judgment of this Court (Annexure A18).

22. Ld. Senior counsel submits that the argument raised by the respondent counsel that section 100 CPC is applicable and there is no substantial question of law in the present RSA is also devoid of merit as section 100 of CPC is not applicable in Punjab and Haryana in view of the Constitution Bench judgment of the Hon'ble Supreme Court in **Pankajakshi (Dead) v. Chandrika (SC)(Constitution Bench) : Law Finder Doc id # 745778**.

23. It is further submitted that both the judgments delivered by Trial Court and First Appellate Court are perverse and illegal because the Courts below have not appreciated evidence in right perspective and ignored the law, and revenue orders, as also order dated 10.02.2009 passed by this Court. It is submitted that '*Perversity itself is a question of law*' as held by the Hon'ble Supreme Court in **Illoth Valappil**

Ambunhi v. Kunhambu Karanavan (SC) : Law Finder Doc Id # 1604296. It is accordingly prayed that the present appeal be allowed.

24. No other argument is made on behalf of the parties.

25. I have heard learned counsel for the parties and perused the case file in great detail.

26. I have given my very thoughtful consideration to the rival submissions made on behalf of the parties. I have also perused the case file and the lower court record in fine detail with the very able assistance of the learned counsel for the parties. I find no merit in the submissions advanced on behalf of the respondent-Plaintiff for the reasons recorded hereinbelow.

27. A few admitted facts are that Risala/father of the parties, was having two kinds of agricultural lands i.e. the agricultural land personally owned by Risala; and the suit land viz the agricultural land which Risala was cultivating as a co-sharer in Shamlat Thola Parmanand measuring 35 kanal 17 marla over which Risala had possessory rights. In respect of the land personally owned by Risala, admittedly a consent decree dated 11.06.1986 was passed as per which Risala had transferred the said land in favour of his 4 sons (1 plaintiff + 3 defendants) equally. Whereas the suit land measuring 35 kanal 17 marla over which Risala had possessory rights, had been retained by Risala for his maintenance.

28. To appreciate the exact factual position and the different pleas taken by the parties, it will be useful to consider the relevant Lower Court Record which has been brought on record by the

appellants/defendants by way of CM-11705-CII-2011. The authenticity of the said documents/record has not been questioned by the learned Counsel for the plaintiff/respondent. A perusal of the plaint (Annexure A1) shows that in Para 5, the plaintiff had pleaded as under: -

> *"5. That the plaintiff has many times requested the defendants that the cultivating right over the suit land was relinquished by their father ShriRisala in his favour and he has still right to cultivate the same but the defendants are adamant. The defendants have finally threatened the plaintiff on 7.7.1999 that they would certainly dispossess him from the suit land by force. Hence this suit."*

29. In the written statement dated 10.8.1999, filed in response thereto (Annexure A2), the defendants had stated as follows: -

> *"1. That para No.1 of the plaint is wrong in the present form and is therefore, denied. It is however, admitted that the father of the parties used to be the owner as a co-sharer of the land mentioned in this paragraph. The cultivating possession was with all the defendants as shri Risala was very old man of 80 years and was not capable of doing any work whatsoever. He was also not in a physical capacity to even supervise the work of cultivation. The same was done by the parties to the suit and shri Satya Narain Plaintiff alone was never in cultivating possession of the suit land. Shri Risala has died on 29.12.1998 and since his death the parties are co-sharer in possession of the suit land. If, there are revenue entries to the contrary, the same are wrong and not in any way binding on the rights of the answering defendants."*

30. The plaintiff had filed replication dated 18.7.2002 (Annexure A3) wherein he stated in Para 2 as follows: -

"1. That para 1 of the written statement as stated is incorrect and denied and the said para of the plaint is reiterated. It is incorrect that Risala was physically so weak that he could not even supervise the work. He was actually cultivating the suit land. The defendant never cultivated the same. The entries in the revenue record are correct.

2. That para 2 of the written statement as stated is incorrect and denied. Para 2 of the plaint is reiterated. Sh. Risala did not own the suit land. He was only cultivating the same as a co-share of the Thola Parmanand. The land of the said Thola was never partitioned."

31. Thereafter, the plaintiff had filed his affidavit in examination in chief dated 11.9.2006 (Ex. PW-1/A- Annexure A-4) in which in Para 2 he had stated as follows: -

"2. That Shamlat Thola Permanand was the owner of the disputed land and my father was cultivating his share in the above land and he actually used to cultivate his share in the above said land through me."

32. However, in his cross-examination dated 22.9.2006 (Annexure A5), the plaintiff has stated as follows: -

"Re-called for cross examination.

XXX by Shri K.D. Bhardwaj, Advocate.

Disputed land is part of ShamlatThola. Earlier the Girdawari was in the name of my father in respect of the land of ShamlatThola, who was living with me. I do not remember as to when my father had died. One case was also pending in the court of the Commissioner in respect of this land. We are four brothers. My father had left a Will in respect of the disputed land, which is filed in this case. When a case was filed in the court of SDM, I did not receive any summons in

respect of the same. I do not know if any correction has been carried out in KhasraGirdawari of this land. I do not know if any such case was pending before Tehsildar. I do not know whether Tehsildar had visited the disputed land on 18.10.1999, however I had not gone there on the said date. I had filed an appeal against the order dated: 18.10.1999, however the same was not allowed.The Tehsildar again visited the site of the disputed land on 16.8.2004, but I was not present at the site. The villages had informed me that Tehsildarhad visited the site. ……"

(Emphases added above by me)

33. From the above pleadings it is clear that the plaintiff at different times, at different places, has given varying and contradictory versions regarding his possession over the suit land i.e. a) In the plaint, it was the case of the plaintiff that the suit land was relinquished in his favour by Risala by way of Rapat Roznamcha; b)in the replication dated 18.7.2002 (Annexure A3), the plaintiff had stated that Risala was cultivating the suit land; c) in the affidavit dated 11.9.2006 in his examination in chief (Ex. PW-1/A/ Annexure A4) the plaintiff has stated that Risala was cultivating the suit land through the plaintiff; and d) in his cross-examination on 22.9.2006 (Annexure A5), the plaintiff has taken a totally different stand and categorically deposed/ stated that Risala had left a Will in respect of the Suit land. (It is pertinent to mention here that the said Will was neither produced nor proved by the plaintiff. The plaintiff merely gave a bald statement regarding a Will which has not seen

the light of the day.) It is my view that from the above facts and contradictory stands of the plaintiff, the falsity of the case put up by the plaintiff, is writ large. These statements falsify the case of the Plaintiff as, in the plaint his case is based on Rapat Roznamcha only. It would appear that the plaintiff himself is unsure as to how he came in exclusive possession of the suit land.

34. On the other hand, it has been the consistent case of the defendants that they have been in continuous cultivating possession of the Suit land as per their respective share. The defendants, in their affidavit (Annexure A6/ Ex. DW1/A)clearly stated that "*all the four brothersare cultivating the land of their respective 1/4th Share each in the above said land and are in cultivatory possession of the same, and till today, we all the four brothers are in possession of their respective shares in the above land and are cultivating the same. There is no question of the exclusive possession of the plaintiff on the above said land.*"

35. In the suit it is the pleaded case of the plaintiff that Risala had relinquished his cultivating possession in the suit land in favour of the plaintiff in 1996 whereafter plaintiff was put into cultivating possession of the suit land. In support, plaintiff has produced copy of Roznamcha for the year 1996-97 dated 03.10.1996 (Annexure A10/ Ex.P3). However, this plea of the plaintiff is liable to be rejected as first and foremost, it is settled law that Rapat Roznamcha is per-se not admissible. As per Section 44 of the Punjab Land Revenue Act, no presumption of truth is attached to Rapat Roznamcha/ Khasra Girdawari.Plaintiff was not

relying upon the Jamabandi but was relying only on khasra girdawari; which is per se inadmissible. In **"Mani Ram & Others Vs. State of Punjab & Others" Law finder Doc ID # 468738,** a Division Bench of this Court held that: –

> *"6. To claim ownership of shamlatdeh by virtue of Section 2 (g)(viii) of the 1961 Act, the petitioners have to prove (i) cultivating possession of land prior to 26.1.1950; (ii) land in dispute being assessed to land revenue; and (ili)land in possession of petitioners not in excess of their share in such shamlatdeh. The petitioners have failed to adduce any evidence much less tangible, cogent and convincing to establish their cultivating possession of the land, in dispute, through their predecessors prior to 26.1.1950. The petitioners have placed on record copy of khasragirdawari for the period October 1946 to March 1950. No presumption of truth is attached to entries in khasragirdawari. In the khasragirdawari, the land has been described as shamlatdeh and in the column of possession as 'possession of right holders' and the nature of land is banjarqadim. Banjar Qadim is uncultivated land that has remained fallow for eight or more harvests. The document produced by the petitioners belies their contention that they are in cultivating possession of the land in dispute through their predecessors prior to 26.1.1950. The petitioners have miserably failed to produce any evidence to satisfy the requirements of Section 2(g)(viii) of the 1961 Act in order to seek exclusion of land in dispute from shamlatdeh or to establish their title to the land in dispute."*

36. Moreover, the said Rapat Roznamcha was never proven before the learned Courts below in accordance with law. Admittedly the concerned Patwari/ Scribe was never examined by the plaintiff; and only the scribe can prove the contents of the document. Even the Lambardar of the village was not associated to identify Risala to prove that Risala appeared before the Patwari. Even the alleged notice given to Risala has also not been produced and/or proved by the plaintiff. Thus, material evidence has been withheld, and the Rapat Roznamcha remained unproven as required under law. In this regard reference may be made to Division Bench judgment of the Bombay High Court in '**Sir Mohammed Yusuf and another v. D and another' (Bombay)(DB) : Law Finder Doc Id # 303138** wherein it is held that evidence of the contents contained in the document is hearsay evidence unless the writer thereof is examined before the Court. A similar view has been taken by this Court in '**Richhpal Singh v. Sandhura Singh' (P&H) : Law Finder Doc Id # 442693**.

37. In contrast, the defendants had produced voluminous evidence to prove their possession over the suit land based on the factual position on spot. The site inspection of the suit land was carried out by the Assistant Collector Grade-II for the first time on 20.08.1999 in respect of which the Inspection Report has been filed and proved by the defendants as Mark 'A' (Annexure A-12). Vide report dated 20.8.1999 (Mark 'A'), it is recorded that the spot inspection was conducted by the Assistant Collector, 2nd Class, Sonepat, in the presence of both the parties and witnesses. Mark 'A' shows that in the on-site inspection of the suit

land, the Assistant Grade-II found that the defendants are also in possession of the suit land on their respective shares.Witnesses present at the spot including respectables of the village such as Lambardar also confirmed that the crop of rice and Jowar on the suit land belonged to both the parties.

38. Thereafter, a second inspection was carried out of the suit land on 16.08.2004 (Annexure A14/ Ex. D-2) as per which also the defendants were found to be in possession of the suit land. It is only after the two spot inspections, that the Assistant Collector vide order dated 26.08.2004 (Annexure A13) made necessary correction in the Khasra Girdawari duly recording therein that the Plaintiff and defendants are cultivating on the suit land on their equal shares.

39. Against thisorder of the Assistant Collector,the Plaintiff preferred appeal before the Collector Sonipat which was dismissed vide order dated 13.09.2005 (Annexure A15/ Ex. D-3), holding that the inspection report dated 16.08.2004 is a detailed report and it is beyond any shadow of doubt. Relevant part of the said order is as follows: -

> *"4. I have perused the record and have also heard the arguments of the ld. Counsels for the parties and I have reached to the conclusion that <u>there is no force in the argument of the appellant that the lower court has forged and fabricated the inspection report.</u> The inspection report dated 16.08.2004 contains the full details and the site was inspected in the presence of Ram Kishan Numberdar, Lehri chowkidar, Ram Chander, Balwan, Dharmi, Fateh, Balwan, Umed, Raj Kumar, Mansa, Lakhi etc. and the possession was*

verified at the site and the statements of all these persons have also recorded at the site and the inspection report has been written in the record in full details. Inspection report contains the details of the crops in each Killa Number and it also contains the details of the possession of each party on the land in dispute. Therefore, there is no truth in the allegation of the appellant that the inspection report is forged document and that the lower court has also given details of the inspection report in the order dated 26.08.2004.I find no force and merit in the rulings and contentions of the counsels for the appellant and accordingly, I dismissed this appeal…"

(Emphasis added)

40. Against the above order dated 13.09.2005 (Annexure A15/ Ex. D-3), the plaintiff filed Revision Petition no.54 of 2005 before the Commissioner, Rohtak which was also rejected vide order dated 27.06.2007 (Annexure A16/ Ex. D-4) by holding that the site was inspected twice and there was no other better evidence before AC Grade-II for recording Girdawari as per ground realities.Relevant extract of order dated 27.6.2007, is as follows: -

"4....I do not find any irregularity in the impugned orders of the lower courts. When the site has been inspected twice after informing both the parties and during both the occasions, cultivation of respondents has been confirmed, there was no other better evidence before the A.C. 2nd Grade for recording Girdawari as per ground realities. Though counsel for the petitioner has taken stand that spot inspection can not be substituted for other evidence but inspite of providing ample opportunity to the petitioner, he has failed to

produce any other evidence. On these grounds, I do not find any force in the arguments of the counsel for the petitioner and accordingly, revision petition is dismissed.".

(Emphasis added)

41. Against the order of Commissioner dated 27.06.2007, plaintiff filed a Second Revision/ROR no. 739 of 2006-07under Section 16 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as "the Act") before the Financial Commissioner. The FC did not find any irregularity in the orders of the Lower Revenue Courts, and thus, dismissed the ROR of the Plaintiff vide order dated 29.09.2008 (Annexure A17) as follows:-

"5. I have heard both the parties and gone through the record of the case. From the perusal of the record, it is evident that AC IInd Grade Sonipat carried out the spot inspection on dated: 16.8.2004 in the presence of Patwarihalqua, Chowkidar, Lambardar and other respectable persons of the village as per the remand order of Collector Sonipat though the petitioner remained absent. AC IInd Grade Sonipat also prepared a spot inspection report whereby the cultivating possession of the respondents has been confirmed. Parties to the suit are real brothers who became co-sharer in the land in dispute after the death of their father. It is a settled law that the possession of one co-sharer is considered to be the possession of all the co-sharers. I am in agreement with the counsel for the respondents that the change of KhasraGirdawari entries can be made after spot inspection keeping in view the actual possession of the parties on the basis of evidence brought on record and revenue officer is not required to go into the complicated question of law regarding

title of land. In the instant case the evidence of the parties was recorded at the initial stage and only spot inspection was required as per directions given in the remand order of Collector Sonipat. Therefore, there are no irregularities in the order of the lower revenue courts. The revision petition is hereby dismissed."

42. The plaintiff then approached this Court by way of Civil Writ Petition No.206 of 2009 praying for washing of the impugned orders dated 26.8.2004, 13.9.2005, 27.6.2007, and 29.9.2008. The said CWP of the plaintiff was dismissed by this Court vide order dated 10.02.2009 (Annexure A18) holding as follows:-

"The Financial Commissioner, while declining to interfere in the order, has clearly observed that A.C. IInd Grade, Sonepat carried out spot inspection on 16.08.2004 in the presences of PatwariHalqa, Chowkidar, Lambardar and other respectable persons of the village as per the remand order passed by the Collector, Sonepat. It is also recorded that the petitioner remained absent. Obviously, it would mean that the petitioner was served a notice. The grievance is that he was never served a notice and the spot inspection has been carried out at his back. The petitioner is in contest with his real brother. They both have inherited this property on the death of their father. Khasragirdawari entries have been recorded on the basis of spot inspection.There would be hardly any scope for interference in writ jurisdiction. The petition is accordingly dismissed."

43. It may first be clarified that it is incorrect to suggest that the revenue proceedings were conducted in the absence of the

plaintiff. It is an admitted fact on record that the plaintiff had participated in the first spot inspection that had taken place on 20.8.1999. In respect of the second site inspection conducted on 16.8.2004, notice was duly sent to the plaintiff. Further, the fact that the plaintiff was aware of the said proceedings is evident from his cross-examination reproduced above (Annexure A5), where he has admitted that he had filed appeal against the inspection report dated 16.8.2004.

44. The above facts/excerpts also reveal that the plaintiff has valiantly tried to demolish the report dated 16.8.2004 by first stating the same to be a forged and fabricated document – as noted by the Collector in above-reproduced order dated 13.09.2005 (Annexure A15/ Ex. D-3). Further, as recorded in the order dated 27.6.2007 (Annexure A16/ Ex. D-4) passed by the Commissioner, although plaintiff was given ample opportunity, he had failed to lead any evidence to contradict or controvert the said report.

45. The above said revenue orders have been discarded by the learned Courts below firstly on the ground that the said revenue orders "*came into existence after initiation of the present suit on 16.07.1999.*" However, the said reasoning of the learned Courts below is palpably incorrect as undisputedly, the application for correction of Khasra Girdawari was filed by the defendants on 11.5.1999, which is prior to filing of the present suit on 16.07.1999. Even otherwise, the said orders, duly exhibited, were passed by Revenue Authorities *prior* to passing of the judgment and decree dated 16.02.2010 by the learned trial

Court. As such, the same could not have been ignored.In fact, even the Judgment dated 10.2.2009 (Annexure A18) of this Court has not been considered by the ld. Courts below while passing the impugned judgments and decrees. The impugned judgments and decrees are therefore erroneous.

46. It has then been contended by learned counsel for the plaintiff that findings of the Revenue Court have no bearing on the Civil Court proceeding. It is my considered view that in the facts and circumstances of the present case, the said contention of the plaintiff is untenable. It is to be appreciated that in the present case, thequasi judicial authorities i.e. AC Grade-II, Collector, the Commissioner and the Financial Commissioner have all categorically held that all the four brothers are in possession and are cultivating the land; and the khasra girdawari has been corrected in name of 4 brothers. Last, but not the least, the said revenue orders have been upheld by this Court vide order dated 10.02.2009 (Annexure A-18). The said Orders duly exhibited which are per-se admissible, and judgment of this Court cannot be ignored and are sufficient to dismiss the case of plaintiff. In this regard, reference may be made to judgment of this Court in **"Pal Singh & Others Vs. Uma Mehta & Others" RSA No.3133 of 1987,**wherein it has been held as under:-

> *"Civil and Revenue Courts – Order passed by the revenue authorities was subsequent to the institution of the suit – The revenue authorities were satisfied with regard to the actual position, and that is the reason the order of the Collector II Grade was challenged by the appellants before the Collector,*

and thereafter the Commissioner (Appeals) – findings of the revenue authorities held binding.

XXX XXX XXX

9. …… In this situation, it is not open to the clients of Shri Mahajan to allege that their possession with regard to the above said three khasra numbers should also be protected by the Civil Court. Shri Mahajan, however, submitted that the finding of the revenue authorities cannot supersede the findings of the Civil-Court which have independently come to the conclusion that plaintiff-appellants were in possession of these three khasra numbers. The submission of Mr. Mahajan may look alluring but on deeper scrutiny it is devoid of any merit. The order passed by the revenue authorities was subsequent to the institution of the suit and the revenue authorities were satisfied with regard to the actual position and that is the reason the order of the CollectorII Grade was challenged by the appellants before the Collector and thereafter the Commissioner (Appeals) who vide order dated 29.1.1995 dismissed the appeal arising from the order dated 2.6.1981. In the light of the above, the second submission of Shri Mahajan also does not hold any water."

(Emphasis mine)

47. All the orders passed by the revenue authorities including the order of this Court are based on the spot inspection and other evidence. Hence, the bald statement of the plaintiff and a Khasra Girdawari entry, which is shown to be contrary to the factual position on ground, cannot prove the exclusive possession of the plaintiff. It is settled law that the best document to show possession is Khasra Girdawari. As

wrong entry was made in the Khasra Girdawari, the defendants had sought correction of it. Needless to say, the only mode of correction in wrong entry in khasra Girdawari/determination of correct position at spot, is through the revenue officials, who will determine the correct position by doing spot inspection. It is not disputed that in the present case, upon spot inspection, the defendants were found to be in possession of their share of the suit land. It is also not disputed that respectables of the village were associated in the spot inspection. It is also found that the crop of the defendant was growing on the suit land.

48. It has next been contended on behalf of the plaintiff that in case of **Gurnam Singh supra** and **Niranjan Singh (supra)** it has been held that correction of Khasra Girdawari entries during pendency of temporary injunction granted by civil court is not relevant; and civil court is to assess independently the evidence regarding possession adduced by parties before revenue authorities. No final verdict about possession should be given unless the parties have had a full opportunity of examining their entire evidence. Let us examine exactly what has been held in the above said pronouncements. In **Gurnam Singh supra** it has been held that: -

> *"...If any orders for the correction of the entries in the Khasra Girdawaris have been made by these authorities, they would hardly be relevant in the civil proceedings and the evidence adduced by the parties in connection with the correction of the entries in the Khasra Girdawaris shall have to be assessed independently by the Civil Courts. No final verdict about*

possession should be given unless the parties have had a full opportunity of examining their entire evidence."

49. This Court in **"Niranjan Singh supra** held that: -

"6....The revenue authorities shall continue to be competent to effect change in the entries in the Girdawaris irrespective of the fact that the civil Court is seized of the same matter, though the finding of the civil Court regarding the status of the contesting respondents including respondent No.3 being a tenant or otherwise will over-ride the finding of the revenue authorities resulting in the change of entries in the Girdawaris."

50. A bare reading of the above pronouncements reveals that the ld. Civil courts have been called upon not to merely rely upon the revenue orders, but to make an independent assessment in respect of the evidence led by the parties before the revenue authorities. However, in the present case, no independent assessment of the revenue evidence has been done by either of the Courts below. The reasoning of the trial court in decreeing the suit of the plaintiff is contained in para 15 of the judgment dated 16.2.2010, the relevant extract of which reads as follows:–

"*If any order for the correction of entries in the Khasra Girdawari was made by these authorities. That would hardly be relevant in the civil proceedings and the evidence produced by the parties in connection with correction of entries in Khasra Girdawari would have to be assessed independently by the civil court. No final verdict about possession should be given unless the parties had full opportunity of examining their evidence. There is nothing on record*

to suggest the possession of the defendants. It has come in the evidence of the plaintiff that he had sown the crop of rice on some part of the land. No suggestion was put to the plaintiff that defendants were in cultivating position as co-sharers. The evidence on record proves the exclusive possession of the plaintiff over the suit property."

51. Similarly, the learned lower Appellate Court in para 17 of the judgment and decree dated 21.4.2011 held as follows: –

> *"17. Any change made in Khasra Girdawari entries when litigation among the parties is pending before a Civil court is not binding on the Civil court. Emphasis laid by learned counsel for the appellants on the fact that application for correction of girdawari entries was pending even before this civil litigation was started by the plaintiff in fact is inconsequential because decision thereon was rendered by Shri Suresh Kumar, Assistant Collector IInd Grade on 26.08.2004 when the civil litigation was pending and the civil court was seized of the matter."*

52. From the above it is clear that in the present case, no independent assessment has been made by the learned courts below. The impugned judgments and decrees do not reveal as to why an independent assessment regarding the factual situation at the spot was not made by the learned courts below. There is even nothing on record to show as to what prevented the courts from making this assessment. In fact, in the peculiar facts and circumstances of the present case, especially in view of the revenue orders Ex. D-1 to D-4 already on record, it was incumbent upon the lower courts to take into account this valuable evidence and

make the assessment as mandated by law. The impugned orders therefore suffer from material error. As such, it could not have been said that "*There is nothing on record to suggest the possession of the defendants."*In this situation the substantial evidence produced by the defendants in the form of revenue orders could not have been ignored; especially in view of the fact that the revenue orders have been upheld by this Court vide order dated 10.2.2009/which has attained finality.

53. In this regard, it is also pertinent to mention here that during cross examination of the plaintiff a question was put to him by the counsel of the defendants as to whether he is ready to get the spot inspection done by the Local commissioner, and the Plaintiff had refused to get the spot inspection done. In his cross-examination (Annexure A-5), the plaintiff has categorically stated that "*I have objection on sending a Local Commissioner to inspect the site for the confirmation of the fact as to who has actually sown the crop."* This sole statement of the plaintiff in cross examination is sufficient to infer that he has not come to the court with clean hands and he is not in exclusive possession of the land. It may also be pointed out here that the learned trial court has wrongly observed that no suggestion was put to the plaintiff during his cross-examination that defendants were in possession as co-sharers. A perusal of the said cross examination of the plaintiff reveals that such a suggestion was indeed put to the plaintiff to which he had replied that "*As per the record, Girdawari is in my name. No other person is in possession of my land."*In these facts and situation, the evidence brought on record by the

defendants could not have been ignored by the learned Courts below, especially as no independent assessment was carried out by them as required under law.

54. It is also to be kept in mind that the case of the plaintiff has to stand on its own legs. The burden of proof is on the plaintiff to establish his case, and he cannot take the benefit of any imagined weakness of the defence; or the failure of the defendants to establish their title, would not entitle the plaintiff to a decree. There cannot be any demur to these propositions. Reliance in this regard is placed on **P.H. Dayanand v. S. Venugopal Naidu , (SC) : Law Finder Doc Id # 177251.**

55. The ld. Counsel for the plaintiff has also placed heavy reliance upon the alleged admission made by defendant no.3/ DW1 during his cross-examination. However, the solitary stray admission of the defendant cannot be read in isolation. The entire pleadings of the defendants have to be read as a totality. The pleadings, and Written Statement, and the entire statements of the defendants have to be read as whole. It is evident that plaintiff and defendants are in cultivating possession of the land in dispute. So, a stray solitary admission in cross examination is inconsequential. Reliance in this regard is placed on judgment of the Hon'ble Supreme Court in **Saygo Bai v. Chueeru Bajrangi (SC) : Law Finder Doc Id # 227237**, although rendered in a criminal proceeding, however, ratio of the said judgment would be applicable to the facts of the present case. In this regard, reliance placed by the plaintiff

on judgment in **Biswanath Prasad supra,** is misplaced being distinguishable on facts and on law.

56. It has also been contended on behalf of the plaintiff that the present appeal has been filed by the defendants under Section 100 of the CPC and therefore, substantial questions of law are required to be framed therein. However, as also admitted by learned counsel for the plaintiff, the said law is obsolete and does not apply to States of Punjab and Haryana in view of judgment of the Hon'ble Supreme Court in **Panjakshi supra. AIR 2016 SC 1213.**

57. It has been sought to be contended by the plaintiff that there are concurrent findings of fact returned by the Courts below and therefore, this Court cannot interfere in the findings of fact under Section 100 CPC. However, as per Section 41 of the Punjab Courts Act:

> ***"41. Second appeals. - (1) An appeal shall lie to the [High Court] [substituted for the words 'Chief Court' by Punjab Act 4 of 1919, section 2 (5).] from every decree passed in appeal by any Court subordinate to the [High Court] [substituted for the words 'Chief Court' by Punjab Act 4 of 1919, section 2 (5).] on any of the following grounds, namely :-***
>
> > *(a)the decision being contrary to law or to some custom or usage having the force of law;*
> > *(b)the decision having failed to determine some material issue of law or custom or usage having the force of law;*
> > *(c)a substantial error or defect in the procedure provided by the Code of Civil Procedure, 1908, (V of 1908) or by any other law for the time being in force which may possibly have*

produced error or defect in the decision of the case upon the merits.

[Explanation. - A question relating to the existence of validity of a custom or usage shall be deemed to be a question of law within the meaning of this section] [Inserted by Punjab Act 6 of 1941, section 2 (a).].(2)An appeal may lie under this section from an appellate decree passed ex- parte.(3)[Sub-section 3 omitted by Punjab Act 6 of 1941, section 2 (b).]"

58. In view of the above discussion, the present appeal is **allowed**; and the impugned judgments and decrees of the learned Courts below, are set aside.

59. Pending application(s) if any also stand(s) disposed of.

02.04.2025 **(Nidhi Gupta)**
Sunena **Judge**

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