IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6400 of 2011

MEHANGA ... APPELLANT (S)

VERSUS

CHINTOO (D) BY LRS. & ORS. ...RESPONDENT (S)

ORDER

This is a defendant's appeal against the judgment of reversal passed by the High Court of Himachal Pradesh whereby the suit of the plaintiff has been decreed.

The predecessor-in-interest of the respondent-plaintiff had instituted Civil Suit No. 139/87, inter alia, seeking a declaration that the plaintiff and the defendant are in joint possession as tenants-at-will of land measuring 9 kanals 8 marlas bearing Khewat No.662, Khasra No.3601 and new Khasra No.3077 situated in Village Polian Beet, H.B. No.525. According to the plaintiff, who had exhibited large number of documents marked as Exhibits 1 to 18 in

the trial of the suit, the joint possession of the parties was established

by the mutation entries until the year 1962-63 when the same were abruptly changed in the name of the predecessor-in-interest of the defendant. The plaintiff, therefore, had filed the suit in question claiming additional reliefs to the effect that an earlier decree dated 12.06.1975 passed in favour of the defendant in Suit No. 389 of 1975 as against the sons of the plaintiff and in respect of the same land was null and void being collusive and the revenue entries made on that basis are without any legal effect.

The claim of the plaintiff was resisted by the defendant who contended that the changes in mutation entries were so made as the predecessor-in-interest of the plaintiffs had voluntarily relinquished/abandoned the land. Further, according to the defendant, Title Suit No.389 of 1975 was filed for the relief of permanent injunction based on a claim of possession of the defendant which was decreed and the said decree has attained finality in law. The land in the present suit as well as in Title Suit No. 389 of 1975 were one and the same except that the plaintiff in the present suit was not a party in Title Suit No.389 of 1975.

The parties having gone to trial with the aforesaid respective cases, appropriate issues were framed by the learned Trial Court.

Elaborate evidence was led by both sides. Thereafter, the learned Trial Court dismissed the suit of the plaintiff which was affirmed in appeal by the First Appellate Court. In Second Appeal, the High Court framed the following two questions as substantial questions of law arising for determination:

> "1. What is the effect of unauthorized change thereby deleting the name of the plaintiff from the joint possession as tenant of the suit land?
> 2. Whether the plea of abandonment by a co-tenant against the other co-tenant can be proved and established simply by oral evidence"?

Answering the first question, the High Court took notice of the fact that the subsequent mutation entries were not supported by any order of the competent Revenue authority authorising a correction of the revenue record. In view of the decision of this Court in Durga (deceased) and others versus Milkhi Ram and others, The Unreported Judgment 1969 (SC) 41, under Section 44 of the Punjab Land Revenue Act, 1887, such subsequent entries would give rise only to a presumption as to the validity thereof which presumption, in the present case, stood rebutted by the absence of

any supporting order of the Revenue Authorities. In the absence of any such order, the later entries would not be legally effective.

The second question framed by the High Court was answered as a consequence to the first. Since the subsequent entries were not considered worthy of credence in the absence of any supporting order, the case of abandonment of the right/possession of the land by the predecessor-in-interest of the plaintiff, as found against the plaintiff by the Courts below, was reversed by the High Court and answered in favour of the plaintiff. On the basis of the aforesaid twin conclusions reached, the suit of the plaintiff was decreed, giving rise to the present appeal by the defendant.

We have heard Mr. Arvind Kumar and Ms. Pragati Neekhra learned counsels for the parties.

Concurrent findings of fact recorded by the learned Trial Court and the First Appellate Court are not to be disturbed by the High Court while exercising jurisdiction under Section 100 of the Code of Civil Procedure unless fundamental errors have occurred on substantial questions of law or findings of fact have been recorded in a manner which discloses patent errors resulting in a failure of justice. In the instant case, Section 44 of the Punjab land Revenue

Act, 1887 as held in Durga (deceased) and others versus Milkhi Ram and others (supra) confers legitimacy to a subsequent entry in the revenue record which effect of law can always be dislodged by cogent and reliable material to satisfy the Court that the legally rebuttable presumption that arises from the operation of Section 44 needs to be ignored. The onus of proving the presumption that arises by operation of the law is on the person against whom the presumption would operate, namely, the plaintiff in the present case. The plaintiff had made an attempt to do so by relying on an order of a Criminal Court in a trial against the Tehsildar for making alleged interpolations in the revenue record showing the name of the defendant as the sole non-occupancy tenant of the suit land. The judgment of the Criminal Court was not exhibited in the suit between

the parties. A perusal of the same, which has been brought on the record of the present appeal, goes to show that the criminal trial pertained to mutation entries of the year 1967-68 and not of the year 1962-63. Even if we proceed by taking into account the judgment of the Criminal Court what cannot escape notice is the fact that the charges in the criminal trial pertain to entries of a different year and not to the year under consideration, namely, the year 1962-63. If that be so, the conclusion is inevitable. Better evidence should have

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been led by the plaintiff to prove their case and to take the entries in the revenue record of the year 1962-63 out of the purview of the presumption of acceptance under Section 44 of the Punjab Land Revenue Act, 1887.

If we have to hold that the subsequent revenue entries of the year 1962-63 must be allowed its full effect and operation by virtue of Section 44 of the Punjab Land Revenue Act, 1887 as we are inclined to, the finding of the High Court with regard to the plea of abandonment, being consequential to the findings on the first issue, will become legally fragile. That apart, the finding of abandonment arrived at by the learned Trial Court and the First Appellate Court appear to have been based on the decree dated 12.06.1975 in Civil Suit No. 389 of 1975 holding the defendant to be in possession of the suit land. Once again if the legal effect of the said decree, which admittedly in respect of the same land, is allowed to have full operation (the bar of res judicata which will not be attracted as the plaintiff was not a party to Civil Suit No.389 of 1975) the plea of abandonment set up by the defendant can be understood to have been proved and established and a reversal thereof not to be justified in law.

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In view of the foregoing discussions, we allow this appeal, set aside the order dated 12.12.2008 passed by the High Court in Second Appeal No. 86 of 1999 and restore the judgment and decree passed by the learned Trial Court as well as the First Appellate Court.

.....J.
[RANJAN GOGOI]

.....J.
[R.K. AGRAWAL]

NEW DELHI
18TH SEPTEMBER, 2014

ITEM NO.106 COURT NO.11 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6400/2011

MEHANGA Appellant(s)

VERSUS

CHINTOO(D) BY LRS.& ORS. Respondent(s)
(With interim relief and office report)

Date : 18/09/2014 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Appellant(s) Mr. Arvind Kumar,Adv.
Mr. Pradeep Kumar Mathur,Adv.
Smt. Poonam Prasad,Adv.
Ms. Laxmi Arvind,Adv.

For Respondent(s) Ms. Pragati Neekhra,Adv.
Mr. Abhishek Kumar Jha,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(MADHU BALA)
COURT MASTER
(signed order is placed on the file)

(ASHA SONI)
COURT MASTER