IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA Nos.367 and 368 of 2007.
Judgment Reserved on :11.11.2016
Date of decision: 30.11.2016

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1. **RSA No.367 of 2007**

Baldev Singh ....Appellant-Defendant

Versus

Chet Ram & Ors. ..Respondents-Plaintiffs

2. **RSA No.368 of 2007**

Baldev Singh ....Appellant-Plaintiff

Versus

Chet Ram & Ors. ..Respondents- Defendants

Coram

The Hon'ble Mr.Justice Sandeep Sharma,Judge.

Whether approved for reporting ?[1] *Yes.*

For the Appellant: **Mr.C.N. Singh, Advocate, in both the appeals.**

For the Respondents: **Mr.G.D. Sharma, Advocate, in both the appeals.**

Sandeep Sharma,J.

Both these appeals are being disposed of by a common judgment as they call for determination of common question of law. Moreover, the identity of the parties in both the appeals is the same.

RSA No.367 of 2007

2. Plaintiffs (respondents herein), namely; Chet Ram, Sewak Ram and Devi Chand sons of late Shri Kirpa Ram, by

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*? *Yes.***

way of suit for permanent prohibitory injunction filed under Section 38 of Specific Relief Act, prayed for decree of permanent injunction restraining the defendant (appellant herein) from causing any sort of interference in their peaceful ownership and possession and also from cutting trees or changing nature of the land and causing any damage and waste to land comprised in Khata/Khatauni No.16/44, Khasra Nos.220 min, 223, 224, 225, 227, 229, 230, 233 and 234, kittas 9, measuring 7 bighas 3 biswas, situated at Mauja Bhaget, Pargana Chail, Tehsil Kandaghat, District Solan *(hereinafter referred to as `suit land')*.

3. Plaintiffs-respondents pleaded that they are recorded as "Gair Maurusi Tenant" over the suit land as per latest Jamabandi, but they have become owners of the land in dispute by operation of law. It was further pleaded that the plaintiffs-respondents are successors-in-interest of deceased Kirpa Ram, who has been shown in possession of land in dispute as tenant on the share of deceased Shonkia. Plaintiffs-respondents claimed that they have become owners of the suit land by virtue of operation of law after H.P. Tenancy and Land Reforms Act, 1972 came into operation. Since defendant with malafide intention started advancing threats to encroach upon the land of the plaintiffs-respondents, they were compelled to file the suit as referred hereinabove.

4. Defendant-appellant also, by way of written statement, refuted the claim put forth on behalf of the plaintiffs-respondents by stating that neither plaintiffs nor their predecessor-in-interest were ever inducted as tenant over the suit land. The revenue entries existing in favour of the plaintiffs-respondents have been incorporated illegally and in unauthorized manner and as such same are void ab-initio. Defendant-appellant further averred that he is successor of the suit land and plaintiffs-respondents have no right, title or interest over the same. Defendant also filed a counter claim alongwith the written statement pleading therein that he is owner in possession of the suit land alongwith other co-owners and the revenue entries in favour of late Kirpa Ram and the plaintiffs have been incorporated wrongly and behind the back of the defendant and his predecessor-in-interest. Defendant-appellant also claimed that the plaintiffs-respondents are trying to dispossess him on the basis of the wrong revenue entries and in case they succeed in dispossessing the defendant from the suit land or the Hon'ble Court comes to the conclusion that the defendant is out of possession then in that eventuality the defendant may be held entitled for possession of the suit land on the basis of title.

5. In the aforesaid background, defendant also sought consequential relief against the plaintiffs-respondents

by restraining them from interfering in ownership and possession of the defendant in any manner whatsoever.

6. On the settled issues, learned trial Court decreed the suit of the plaintiffs-respondents and restrained the defendant-appellant from causing any sort of interference in the peaceful ownership and possession of the plaintiffs and also from cutting trees or changing the nature of the suit land, described hereinabove. While decreeing the aforesaid suit of the respondents-plaintiffs, trial Court below dismissed the counter claim of the defendant.

7. Being aggrieved and dis-satisfied with the aforesaid judgment and decree, decreeing the suit of the plaintiff and dismissing the counter claims of defendant-appellant, defendant-appellant approached the learned first appellate Court by way of Civil Appeal No.65-S/13 of 2006, laying challenge therein to the decree of suit by the learned trial Court as well as dismissal of the counter claim filed by the defendant-appellant. However, fact remains that the aforesaid appeal preferred by the appellant-defendant was dismissed and the judgment and decree of learned trial Court was affirmed.

8. In the aforesaid background, appellant-defendant approached this Court praying therein for quashing and setting aside of the judgment passed by both the Courts below.

This Court vide order dated 28.8.2008 admitted the instant appeal on following substantial questions of law:

> ***"a. Whether the judgment/decree dated 26.4.2007 passed by the court below is perverse, as the findings are contrary to pleadings, evidence, admissions on record and the law, as the relevant material have been ignored and irrelevant/ inadmissible material/evidence have been taken into consideration, which has led to miscarriage of justice?***
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> ***b. Whether the first appellate court below misread, misconstrued, misinterpreted the provisions of the law and failed to appreciate the fact that the trial court by not framing the material issue have caused prejudice to the appellant, in law and the appellant have been deprived of just and proper opportunity to prove and contest the case, which procedure adopted by the trial court was perverse and illegal?***

9. Before proceeding to decide the aforesaid substantial questions of law, it may be noticed that during arguments having been advanced by counsel representing the appellant-defendant, he was confronted with the judgment passed by the Hon'ble Apex Court in ***Rajni Rani and Another vs. Khairati Lal and Others, (2015)2 SCC 682,*** which was followed by this Court **in RSA No.293 of 2006, titled as: Piar Chand & Others vs. Ranjeet Singh & Others, decided on 16.9.2016**, whereby it has been categorically held that counter

claim, if any, dismissed by trial court needs to be challenged by way of affixing separate requisite court fee.

10. Mr.C.N. Singh, learned counsel representing the appellant-defendant, after perusing the judgment, referred hereinabove, fairly stated that at this stage, he would not be pressing his appeal regarding counter claim. This Court, solely with a view to ascertain the genuineness and correctness of arguments having been advanced by Mr.C.N. Singh, whereby he stated that there has been total mis-appreciation and mis-reading of evidence led on behalf of the respective parties by both the Courts below, perused the entire evidence, be it ocular or documentary, led on record by the parties.

11. After carefully perusing the material available on record, this Court finds it difficult to accept the aforesaid contention made by Mr.Singh that first appellate Court failed to appreciate the evidence in its right perspective and trial Court failed to frame material issues, as a result of which great prejudice is caused to the appellant-defendant.

12. Close scrutiny of the pleadings adduced on record by the parties nowhere suggests that learned trial Court failed to frame proper issues. Admittedly, plaintiffs-respondents filed a suit for permanent prohibitory injunction praying therein for restraining the defendant from causing any sort of interference in the peaceful possession and ownership of the plaintiffs.

Plaintiffs in their plaint specifically averred that they are recorded as "Gair Maurusi Tenant" over the suit land as per latest Jamabandi and they are owners in possession of the suit land as per law, whereas, appellant-defendant by way of written statement refuted the aforesaid claim by stating that the respondents-plaintiffs were never inducted as tenant over the suit land. In view of aforesaid pleadings, learned trial Court framed the following issues:

> ***"1. Whether the plaintiffs are entitled for the relief of permanent prohibitory injunction as claimed? OPP.***
>
> ***2. In case Issue No.1 is proved in affirmative, whether the plaintiffs are entitled for a decree of possession of the suit land as alleged ? OPP.***
>
> ***3. Whether the entry showing the plaintiffs as tenant over the suit land is incorrect, as alleged? OPD.***
>
> ***4. Whether the plaintiffs have no right, title or interest over the suit land as alleged? OPD.***
>
> ***5. Whether the defendant is entitled for relief of declaration that he alongwith other persons is owner in possession of the suit land as alleged ? OPD.***
>
> ***6. Relief."***

13. Perusal of aforesaid issues framed by learned trial Court clearly suggest that all the material issues, which were required to be framed in light of pleadings available on record,

were duly framed by Court and as such this Court sees no force in the contention put forth on behalf of the appellant-defendant that no material issues were framed by the trial Court. Moreover, if at all defendant-appellant was aggrieved with non-framing of proper issues they had remedy under law to get the additional issues framed. Similarly, evidence led on record by respective parties, especially Ex.DX-1 and Ex.DX-2, i.e. Jamabandies for the years 1952-53 and 1956-57 suggests that predecessor-in-interest of appellant-defendant was recorded as owner, but revenue record placed on record by the plaintiffs-respondents in support of their claim is Jamabandi for the year 1960-61, perusal whereof clearly suggests that they were inducted as tenants over the suit land in the year 1960-61. Plaintiffs by way of placing on record ample evidence in shape of documentary evidence Ex.PW-1/A and Jamabandies Ex.PW-1/B to Ex.PW-1/D and copy of mutations Ex.PW-1/E and Ex.PW-1/F, have successfully proved on record that Shri Kirpa Ram, their predecessor-in-interest, was inducted as “Gair Maurusi Tenant” over the suit land by Shri Shonkia Ram, predecessor-in-interest of appellant-defendant and admittedly there is no document placed on record by the appellant-defendant to rebut the continuous entries showing the respondents-plaintiffs as “Gair Maurusi Tenant” over the suit land. Similarly, this Court finds that in all these aforesaid

revenue entries, plaintiffs have been shown to be paying rent @ Rs.80/- to the landlord till 1980.

14. At this stage, Shri C.N. Singh, counsel representing the appellant-defendant, stated that change in revenue entries was effected at the back of appellant-defendant and as such same are not binding upon the appellant-defendant. He also argued that since respondents-plaintiffs were unable to place on record any order, issued by revenue authorities, ordering the change in revenue entries, change made in revenue entries has no legal sanctity and same could not be looked into by the Courts below. Mr.Singh, in support of his aforesaid contention that change in revenue entries made at the back of appellant-defendant, who has been coming in possession continuously before effecting illegal change, placed reliance on the judgments passed by our own High Court in ***Tej Ali vs. Charag Deen & Others, RSA No.6 of 2002, decided on 9.9.2015, Desh Raj alias Deshi vs. Joginder Singh and another, RSA No.500 of 2002, decided on 27.3.2014, Smt.Nirmala Devi and Others vs. The Financial Commissioner (Appeals), & Others, CWP No.1312 of 2007, decided on 3.1.2013 and Shiam Singh and Others vs. Chaman Lal and Others, RSA No.261 of 1996, decided on 5.4.2010.***

15. Mr.G.D. Sharma, learned counsel representing the respondents in both the appeals, supported the judgments passed by both the Courts below. Mr.Sharma, while inviting the attention of this Court to the judgments passed by both the Courts below, strenuously argued that same are based upon correct appreciation of evidence available on record and as such there is no scope of interference, whatsoever, of this Court in the present facts and circumstances of the case. He further stated that close scrutiny of the judgment passed by both the Courts below clearly suggests that Courts below have dealt each and every aspect of the matter meticulously and all the relevant material placed on record by the respective parties has been taken note of at the time of passing impugned judgment and as such this Court has no occasion, whatsoever, to interfere with the well reasoned concurrent findings returned on fact and law by both the Courts below. In this regard, to substantiate his aforesaid plea, he placed reliance upon the judgment passed by Hon'ble Apex Court in ***Laxmidevamma and Others vs. Ranganath and Others,*** **(2015)4 SCC 264.**

16. I have heard learned counsel for the parties and gone through the record of the case carefully.

17. In the instant case, after perusing documentary evidence led on record by respondents-plaintiffs, it clearly

emerge that Shri Shonkia Ram, predecessor-in-interest of the appellant-defendant, had inducted Shri Kirpa Ram as "Gair Maurusi Tenant" over the suit land on the rent of Rs.80/-. It is also undisputed that Shri Shonkia Ram, predecessor-in-interest of the appellant-defendant, was alive till the year 1999. It is not understood that why original owner i.e. Shonkia Ram did not lay challenge, if any, to aforesaid entries effected in favour of Kirpa Ram during his life time. It stands duly proved on record that since 1960-61, predecessor-in-interest of the respondents-plaintiffs, has been coming in continuous possession of the suit land till filing of suit in 2001. There is no evidence led on record by appellant-defendant suggestive of the fact that at any point of time they had applied for correction of revenue entries in terms of provisions contained in H.P. Land Revenue Act. It is only after the death of original owner Shonkia Ram, appellant-defendant staked claim qua the suit land by refuting the claim put forth on behalf of respondents-plaintiffs.

18. At this stage, it needs to be taken note of the fact that prior to filing of instant suit by respondents-plaintiffs, appellant-defendant nowhere claimed himself to be owner in possession of the suit land. In the written statement filed to the plaint in the present suit, appellant-defendant denied the assertions made by respondents-plaintiffs that they were

inducted as "Gair Maurusi Tenant" over the suit land. Interestingly, in the written statement appellant-defendant, while denying that the respondents-plaintiffs are owners in possession of the suit land, stated that on the basis of wrong revenue entries, respondents-plaintiffs are trying to dispossess the appellant-defendant. Defendant in the counter claim having been filed by him claimed that by filing the suit, the plaintiffs-respondents have threatened the title of defendant qua the suit land and as such the defendant has a cause to prefer counter claim. But, interestingly in prayer clause appellant-defendant, while praying for dismissal of the suit also prayed that the entries in favour of the plaintiffs qua the suit land are wrong, illegal, null and void and plaintiffs have no right, title or interest over the same in any manner, whatsoever and consequently prayed that in case respondents-plaintiffs are found to have been in possession of the suit land, decree for possession in his favour and against the plaintiffs may be passed. Counter claims were dismissed and no independent appeal was preferred before first appellate Court and at this stage defendant has not pressed his counter claims.

19. At this stage, it may be noticed that subsequently, after one year of the filing of the instant suit by the plaintiffs-respondents, appellant-defendant filed another suit bearing Civil Suit 58-K/1 of 2002 on 23.12.2002 laying therein

challenge to the revenue entries showing respondents-plaintiffs and their predecessor-in-interest to be in possession of the suit land, but, interestingly in that suit appellant-defendant, plaintiff therein, stated, *"That the cause of action for filing the suit arose to the plaintiff against the defendants on 25.5.2002 when the defendants on the basis of wrong revenue entries in their favour in the column of possession, started interfering in the suit land and threatened to change the nature of the suit land and to cause damage to the same and also threatened to raise construction thereon and prior to it the cause of action arose when the wrong entries were incorporated in the revenue record and the cause of action is still continuing."*

20. Aforesaid assertion qua the cause of action, having been accrued to the appellant-defendant, is totally contrary to stand taken by him in Civil Suit No.78-K/1 of 2001 filed by the respondents-plaintiffs in the present case. Apart from examination of aforesaid overwhelming evidence led on record by the plaintiffs suggestive of the fact that his predecessor-in-interest was inducted as "Gair Maurusi Tenant" by Shri Sonkia Ram, predecessor-in-interest of appellant-defendant, this Court also perused oral evidence led on record by appellant-defendant to prove that respondents-plaintiffs were never inducted as "Gair Maurusi Tenant". Perusal of oral evidence led on record by the appellant-defendant nowhere rebuts the

entries showing respondents-plaintiffs as “Gair Maurusi Tenant” of the suit land. None of the appellant-defendant’s witnesses stated anything with regard to induction of Kirpa Ram, predecessor-in-interest of respondents-plaintiffs as “Gair Maurusi Tenant” over the suit land, rather they all stated that Kirpa Ram was a spiritual person and he never used to cultivate the land and they saw appellant-defendant Baldev Singh in possession. Apart from above, there is nothing much in their statements/depositions which could persuade this Court that appellant-defendant by way of leading cogent and convincing evidence was able to rebut the entries made in the revenue record after 1960-61 showing predecessor-in-interest of the respondents-plaintiffs as “Gair Maurusi Tenant” over the suit land. Rather, it emerged from the perusal of oral evidence led on record by the respective parties that suit land on which Kirpa Ram, predecessor-in-interest of the plaintiffs-respondents, was inducted as “Gair Maurusi Tenant”, situated at village Bhaget, whereas, Shonkia Ram original owner used to reside at village Dehar, which was 35 kilometers away from the suit land. None of the defendant witnesses stated that they are residents of village in which suit land is situated, rather they admitted that they belong to other village which is at far distance from village Bhaget. Though appellant-defendant termed the entry in favour of Kirpa Ram as a stray

entry, but, as has been observed above, no cogent and convincing evidence was led on record to rebut the latest entries made in favour of respondent-plaintiffs. Moreover, Jamabandies placed on record for the years 1952-53 and 1956-57, Ex.D-X1 and Ex.D-X2, pertain to period prior to 1960-61, when Kirpa Ram, predecessor-in-interest of respondents-plaintiffs, was inducted as "Gair Maurusi Tenant". Once respondents-plaintiffs themselves claimed that they were inducted as "Gair Maurusi Tenant" over the suit land after 1960-61, it was incumbent upon the appellant-defendant to place on record entries, if any, in his favour after 1960-61 suggestive of the fact that they were shown as owners in possession of the suit land and as such any Jamabandi pertaining prior to 1960-61 was rightly not considered by Courts below.

21. True, it is that it is settled law that presumption of truth is attached to the latest entries and same are rebuttable if it is proved on record that entries, if any, were not effected in accordance with law. In the present case, respondents-plaintiffs by way of placing convincing evidence successfully proved on record that since they were owners in possession of the suit land after having been inducted as "Gair Maurusi Tenant" by Shri Shonkia Ram, predecessor-in-interest of respondents-plaintiffs, they were rightly shown as "Gair

Maurusi Tenant" over the suit land in the Jamabandi for the year 1960-61. While going through the evidence on record, this Court could lay its hand to report of Patwari given at the time of Girdawari dated 2nd December, 1959, which clearly suggests that change in the revenue entries was effected in the subsequent Jamabandi for the year 1960-61 by Patwari after noticing the change of possession and as such there is no force in the contention put forth by Shri C.N. Singh that change in entry was made without any basis and without any authority. Apart from above, it stands duly proved on record that since 1960-61 respondents-plaintiffs were recorded as "Gair Maurusi Tenant" over the suit land, they have acquired the status of owners by virtue of Section 104 of H.P. Tenancy and Land Reforms Act, 1972.

22. After carefully perusing the evidence led on record by respective parties, this Court sees no reason to differ with the judgment passed by both the Courts below that the respondents-plaintiffs were in possession of the suit land as tenants and they have become owners by operation of law. Hence, this Court really finds it difficult to conclude that Courts below misread and mis-appreciated and mis-construed the evidence led on record. Since there is proper appreciation of evidence, pleadings and law, by no stretch of imagination judgments passed by Courts below can be termed to be

perverse. Substantial Questions of law are answered accordingly.

RSA No.368 of 2007

23. The suit out of which instant appeal arises was instituted by appellant-plaintiff Baldev Singh for declaration and injunction to the effect that revenue entries showing the respondents-defendants and their predecessor-in-interest in possession of suit land comprised in Khata No.20, Khatauni No.51, Khasra Nos.42 min, 101 min, 103 min and 118 min, measuring 4 bighas 6 biswas, situated at Mauza Tikkar, Pargana Chail, Tehsil Kandaghat, District Solan *(hereinafter referred to as the `suit land')* are totally wrong, illegal, null and void ab-initio and are not binding on the rights of the appellant-plaintiff.

24. Since facts contained in the plaint in the present suit is virtually repetition of stand taken by appellant-plaintiff in the written statement filed by him in the Civil Suit No.78-K/1 of 2001, which was subject matter of RSA No.367 of 2007, this Court deems it not necessary to narrate the same here for sake of brevity. Similarly, respondents-defendants have taken same stand as they had taken in Civil Suit No. 78-K/1 of 2001 filed by them, whereby they claimed themselves to be the owners of the suit land being "Gair Maurusi Tenant" having

been inducted by Shri Shonkia Ram, predecessor-in-interest of the plaintiff-appellant.

25. By way of instant suit i.e. Civil Suit No.58-K/1 of 2002, which was admittedly filed after one year of filing of Civil Suit No. 78-K/1 of 2001, appellant-plaintiff prayed for decree of permanent prohibitory injunction restraining the defendants (respondents herein) from interfering in the suit land and changing its nature and raising any type of construction and to declare revenue entries showing defendants-respondents and their predecessor-in-interest Kirpa Ram in the column of possession of the suit land as wrong, illegal, null and void ab-initio and not binding on the rights of the plaintiff-appellant.

26. Learned trial Court on the basis of pleadings of the parties framed the following issues:

> ***"1. Whether the plaintiff is owner-in-possession of the land and the revenue entries are incorrect as alleged? OPP.***
>
> ***2. In case the plaintiff proves in issue No.1, whether the plaintiff is entitled for the relief of permanent prohibitory injunction as alleged? OPP.***
>
> ***3. Whether the status of the defendants is that of owner qua the land by operation of law as alleged? OPD."***

27. Subsequently, learned trial Court vide judgment and decree dated 31.8.2006 dismissed the suit of the appellant-plaintiff by holding that plaintiff is neither owner nor in possession of the suit land and as such he was declined relief of permanent prohibitory injunction.

28. Being aggrieved and dis-satisfied with the aforesaid judgment and decree, appellant-plaintiff filed an appeal before learned District Judge, Solan, which came to be registered as Civil Appeal No.66-S/13 of 2006. However, aforesaid appeal preferred by appellant-plaintiff was dismissed.

29. In the aforesaid background, appellant-plaintiff approached this Court praying therein for decreeing the suit after setting aside the judgment passed by both the Courts below. This Court vide order dated 28.5.2008 admitted the instant appeal on the following substantial questions of law:-

> ***"1. Whether the first appellate court below was right in ignoring the law well settled that the revenue entries cannot be changed behind the back of owner i.e. the father of the appellant-plaintiff, that to in favour of late Shri Kirpa Ram, who was a sanayasi & the successors in-interest i.e. the respondent-defendants, have no right under law to claim any right, if any, on the basis of illegal revenue entries and such change is against, the law and the procedure to be adopted under HP Land Revenue Act and HP Lands Record Manual, 1992?***
>
> ***2. Whether the revenue entries which have been changed in an unauthorized manner carries no presumption of truth***

in the eyes of Law and are automatically replaced by previous entries, and if that being the legal position then all revenue entries in favour of late Sh.Kirpa Ram who was a sanayasi (Admitted position on record) and further to the respondents (predecessor-in-interest) was void-ab-initio and do not create any right, title or interest in favour of the respondents/Defendants?

3. Whether the first appellate court below acted contrary to the principles of law of evidence by giving its findings contrary to the evidence, and law which very well supported the case of the appellant/respondent/counter claimant?

30. Keeping in view the text and contents of questions No.1 and 2, this Court would be taking up these questions together for consideration. True it is that revenue entries cannot be changed behind the back of the owner and change, if any, can be effected in revenue record on the orders, if any, passed by the revenue authorities. In both the connected appeals facts are common and dispute is qua the suit land which is subject matter of both the appeals and parties had led similar evidence, as has been led in Civil Suit No.78-K/1 of 2001, which was subject matter in RSA No.367 of 2007. While deciding RSA No.367 of 2007, this Court minutely perused the evidence led on record by appellant-plaintiff to demonstrate that Shri Kirpa Ram, predecessor-in-interest of respondents-defendants, was never inducted as "Gair Maurusi Tenant" over

the suit land by Shri Shonkia Ram. At the cost of repetition, it may be stated that appellant-plaintiff nowhere successfully proved by leading cogent and convincing evidence on record that entries made in favour of Shri Kirpa Ram, predecessor-in-interest of respondents-defendants, showing him as "Gair Maurusi Tenant" over the suit land are wrong, illegal and void abinitio. Appellant-plaintiff only placed on record two Jamabandies pertaining to the years 1952-53 and 1956-57, suggestive of the fact that their predecessor-in-interest Shri Shonkia Ram was entered in the column of possession qua the suit land, but, as has been discussed in earlier RSA No.367 of 2007, decided by this Court, there is no document placed on record by appellant-plaintiff suggestive of the fact that Kirpa Ram, predecessor-in-interest of respondents-defendants, was wrongly shown as "Gair Maurusi Tenant" over the suit land. Since respondents-defendants specifically claimed that they were inducted as "Gair Maurusi Tenant" by Shonkia Ram in the year 1960-61, appellant-plaintiff ought to have placed on record documentary evidence, if any, suggestive of the fact that even after 1960-61 they were shown as owners in possession of the suit land. Similarly, this Court, while perusing the record of another case, could lay its hand to the document Ex.DX-3 i.e. Rapat Roznamcha made by Patwari concerned during Girdawari, perusal whereof clearly suggests that entry

made in Jambandi pertaining to the year 1960-61 was not mere a stray entry, rather same was effected on the report of Patwari who vide Rapat Roznamcha for the year 1959-60 found Kirpa Ram, predecessor-in-interest of respondents-defendants, in possession of the land and as such there is no force in the contention raised on behalf of appellant-plaintiff that change made in the revenue entry in the Jamabandi for the year 1960-61 is without any basis.

31. Similarly, in the present case also no sufficient oral evidence was led on record by appellant-plaintiff to demonstrate that Shri Kirpa Ram, predecessor-in-interest of respondents-defendants, was never inducted as a "Gair Maurusi Tenant" over the suit land because none of the plaintiff witness has stated anything with regard to induction of Kirpa Ram as "Gair Maurusi Tenant", rather they all have stated that since Kirpa Ram was a *sanyasi,* there was no occasion to induct him as a "Gair Maurusi Tenant". Moreover, as has been observed in earlier case also that original owner Shonkia Ram, who was alive till the year 1999, never laid challenge, if any, to the continuous entries in revenue record in favour of predecessor-in-interest of respondents-defendants. Apart from above, filing of present suit by appellant-plaintiff itself suggests that prior to filing of the instant suit he had not taken any steps to get the revenue entries corrected, hence it

may not be open for him to file suit after 45 years for correction of revenue entries that too after filing the suit by respondents-defendants seeking permanent prohibitory injunction against the appellant-plaintiff from interfering in the suit land. Since there is evidence in shape of Ex.DX-3 suggestive of the fact that change in entries was made pursuant to Rapat Roznamcha made by Patwari, who found respondents-defendants in possession of the suit land, this Court sees no force in the contention put forth on behalf of the appellant-plaintiff that change in revenue entries was made without any basis and at his back. Moreover, at this stage, this Court finds that counter claims, filed by the present appellant-plaintiff in the suit filed by the respondents-defendants, wherein challenge was laid to the revenue entries showing the respondents-defendants as "Gair Maurusi Tenant", were dismissed by the trial Court.

32. Appellant-plaintiff by way of common appeal laid challenge to the judgment passed by learned trial Court in favour of respondents-defendants decreeing their suit and dismissing counter claim of the appellant-plaintiff and the same was dismissed. Since there was no separate legally constituted appeal preferred by the appellant-plaintiff qua the dismissal of counter claim, no composite appeal could be entertained by the first appellate Court, as has been done in

the present case. Moreover, in the present appeal since counsel representing the appellant-plaintiff has stated that he may not be pressing counter claim, finding already returned by trial Court qua counter claim has attained finality. Since there was already finding of trial Court qua the alleged wrong entries having been effected in the revenue record in favour of respondent-defendant by the trial Court in Civil Suit No.78-K/1 of 2001, while dismissing the counter claim, the Court below ought to have not entertained the instant suit preferred by present appellant-plaintiff, wherein he again laid challenge to the revenue entries showing respondent-defendant as "Gair Maurusi Tenant" over the suit land.

33. Hence, this Court, after carefully perusing/ examining the evidence led on record in both the cases, is fully convinced that respondents-defendants were able to show on record by leading cogent evidence that they were inducted as tenants by predecessor-in-interest of appellant-plaintiff and they had been paying regular rent to the original owner and thus relationship of landlord and tenant. As far as change in revenue entries is concerned, it has already been discussed in detail that those were changed on the basis of report submitted by Patwari in the shape of Roznamcha Ex.D-3 to effect that he after seeing the possession of the predecessor-in-interest of the respondents-defendants over the suit land effected change in

record. In view of the above, substantial questions of law are answered accordingly.

34. This Court is fully satisfied that both the courts below have very meticulously dealt with each and every aspect of the matter and there is no scope of interference, whatsoever, in the present matter, since both the Courts below have returned concurrent findings, which otherwise appear to be based upon proper appreciation of evidence, this Court has very limited jurisdiction/scope to interfere in the matter. In this regard, it would be apt to reproduce the relevant contents of judgment rendered by Hon'ble Apex Court in ***Laxmidevamma's*** case supra, wherein the Court has held as under:

> ***"16. Based on oral and documentary evidence, both the courts below have recorded concurrent findings of fact that the plaintiffs have established their right in A schedule property. In the light of the concurrent findings of fact, no substantial questions of law arose in the High Court and there was no substantial ground for reappreciation of evidence. While so, the High Court proceeded to observe that the first plaintiff has earmarked the A schedule property for road and that she could not have full-fledged right and on that premise proceeded to hold that declaration to the plaintiffs' right cannot be granted. In exercise of jurisdiction under Section 100 CPC, concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the***

judgment of the High Court cannot be sustained."

(p.269)

35. In the facts and circumstances discussed above, this Court is of the view that findings returned by the trial Court below, which were further upheld by the first appellate Court, do not warrant any interference of this Court as findings given on the issues framed by the trial Court below as well as specifically taken up by this Court to reach the root of the controversy appear to be based on correct appreciation of oral as well as documentary evidence. Hence, both the aforementioned appeals fail and are dismissed, accordingly. There shall be no order as to costs.

36. Interim order, if any, is vacated. All the miscellaneous applications are disposed of.

November 30, 2016 **(Sandeep Sharma)**
(aks) **Judge**