

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 1214 of 1991 (O&M)
Date of decision: 14.10.2015**

Deepa @ Dalip Chand and another

... Appellants

versus

Nanak Chand and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Suvir Sehgal, Advocate for the appellants.

Mr. Vivek Salathia, Advocate for respondent No. 3 and 4.

K.Kannan, J.

The appellants have proposed substantial questions of law on 14.03.2012 since at the time of admission substantial questions of law has not been framed.

Counsel appearing on behalf of the respondent has been served with the substantial questions of law and both the parties agree that the case would require to be considered on the substantial questions already proposed. I will, therefore, take up appeal for consideration on the question already proposed as requiring adjudication. Both the counsel are prepared to argue the case on the questions framed already.

The defendant Nos. 1 and 2 are the appellants before this Court. The plaintiffs filed a suit for injunction restraining the defendants from dispossessing the plaintiffs as tenant and interfering with their possession. The defendant Nos. 1 and 2 were the sons of Jaggo who admittedly was a tenant of defendant Nos. 2 to 4. The plaintiffs were the sons of Jamma who was the 1st son of Jaggo. Jaggo died in the year 1978 and according to the plaintiffs their father Jamma was in possession and recorded as such in the revenue records. Jamma died in the year 09.10.1987 and after Jamma's death, the plaintiffs

would contend that they have stepped into the shoes and have qualified to be treated as tenants in possession. The plaintiff's contention is that defendant Nos. 1 and 2 who are the brothers of Jamma had no right to dispossess the plaintiffs. The suit came to be instituted when according to the plaintiff defendant Nos. 1 and 2 would not allow the palintiff to enter upon the land from the year 1987.

The owners, defendant Nos. 3 and 4 remained ex-parte and the principal contest was entered by defendant Nos. 1 and 2. They asserted that they were in actual possession and relied on the fact that the defendant Nos. 3 and 4 had moved an ejectment application under the Punjab Security of Land Tenure Act and when the order was passed directing the ejectment, Jamma as well as defendant Nos. 1 and 2 jointly filed an appeal before the Collector which was accepted on 21.09.1981 and hence 1 and 2 defendants' own status as tenants after the death of Jaggo was an admitted fact even by the landlords/defendant Nos. 3 and 4. When the plaintiffs filed a suit they literally were asking for injunction against the representatives of the original tenants and who are treated to be co-tenants along with their father under whom the plaintiffs were claiming. There was no manner by which the Court could have granted injunction in favour of the plaintiffs, for the defendant Nos. 1 and 2 had heritable interest as tenants by virtue of Section 159 of the Punjab Tenancy Act. The Courts below were wholly unjustified in interfering abandonment of defendant Nos. 1 and 2 and there was no effect of pleadings by the plaintiffs. I have referred to the fact that it was a matter of proceedings before the Assistant Collector and the District Collector and the orders were filed before the Appellate Court which were not considered at the time when the appeal was disposed of. The said documents are surely relevant and the correctness of the orders cannot be doubted since they are public documents. There was a reference to the maintenance claim by the wife of Jamma and I find the document to be wholly irrelevant and reject the

The decree granted in favour of the plaintiff is untenable and it is set aside. There is no representation on behalf of the plaintiffs before this Court though they are served with notice. Only the counsel for respondent Nos. 3 and 4/owner is present and states that the property has been taken possession of during the pendency of the appeal. Such a written affirmation is made in the reply to the application filed by the appellant for “stay”. This appeal can go as far as to state that the plaintiffs who claimed as tenants cannot maintain the relief of injunction against the co-tenants who are defendant Nos. 1 and 2. If the plaintiffs have lost possession during the pendency of appeal which may affect the rights of defendant Nos. 1 and 2 as well, it will be open for them to resort to such remedy as the law allows but the appeal will stay confined to a finding that the plaintiffs' relief of injunction on the date of suit cannot be sustained and the judgments of the Courts below would required to be set aside. All substantial questions of law raised are answered as above finding that defendant Nos. 1 and 2 were to be treated as tenants along with plaintiffs under the Punjab Tenancy Act and that further the Courts were in error in inferring abandonment of the right as tenants in favour of the plaintiffs in the absence of any proof.

The regular second appeal is allowed on the above terms.

(K.KANNAN)
JUDGE

14.10.2015
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