

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 2638 of 2012 (O&M)
Date of decision:- 27.07.2015

Bhupan Lal @ Bhup Singh and others ...Appellants

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sachin Mittal, Advocate
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

Plaintiffs-Appellants (for short 'the appellants') are in regular second appeal against the concurrent finding of facts recorded by both the Courts below.

The case set up by the appellants before the Courts below was that their predecessor in interest namely Ramji Lal cultivating the land bearing Khewat/khata No. 489/534, Rect No. 22, Killa No. 13 (8-0) situated in village Gangauli for the last more than sixty years. At the time of giving dispute land to Ram Ji Lal by the proprietors of the village Gangauli, there was an oral agreement not to eject the predecessor of the appellants and the land was given forever for the purpose of cultivation. Thus, the appellants and their predecessor have been cultivating the land without

payment of any rent or batai on payment of land revenue only. The appellants have acquired the right of ownership but their name have not been incorporated in record-of-rights by the mistake committed by revenue officials. The appellants issued a legal notice on 22.08.2006 u/s 80 CPC to the State of Haryana.

On notice, defendant No. 1 contested the suit and on merits asserted that the appellants want to reply upon null and void entries, which are in the name of dead person. The appellants have admitted the ownership and possession of defendant No. 1 over the suit property.

Defendant Nos. 2 to 11 contested the suit and on merits submitted that appellants want to reply upon null and void entries, which are in the name of dead person. The appellants have admitted the ownership and possession of the defendants over the suit property.

Both the Courts below dismissed the suit of the appellants on the ground that the appellants could not prove any oral agreement making promise not to eject forever from the statement of P.W.1 and P.W.2. The entries in the records-of-rights along are insufficient to prove that either the appellants or their predecessor-in-interest had deposited or paid any land revenue or cesses chargeable at that time qua the disputed land. The appellants have not claimed occupancy status under Section 5 of the Punjab Tenancy Act.

The appellants could not fulfill the test of acquiring occupancy rights in respect of the land in dispute. The judgment Muni Ram and others v. Phullia and Lalu, 1974 PLJ 369 (P&H) cited by learned counsel for the plaintiffs, was held to be not applicable to the facts of the present case rather this judgment goes against the appellants. As per jamabandi for the year 1938-39, the land in dispute has been shown in khasra No. 378 measuring 0-15, meaning thereby the predecessor in interest of the appellants was inducted as tenant by proprietors on 'Batai-Tihara'. In the subsequent jamabandis in the column of rent the entry 'Bashrah Malkan' has been shown but how the entry was changed in the column of rent is nowhere proved. No documentary evidence has been led by the appellants to prove this fact. Thus, the entry has been changed by mutual consent of the proprietors and the tenant or by an order passed by any higher authorities. But neither the order of any authority nor the document showing the mutual consent of the proprietors and the tenant has been produced by the appellants.

After going through the judgment passed by both the Courts below, no fault can be found with the findings rendered by the the Courts below, which is based on facts and law. There is no illegality much less perversity in the findings recorded by the Courts below.

No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

July 27, 2015
G Arora

(RITU BAHRI)
JUDGE