

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1879 of 2013 (O&M)
Date of decision 25.08. 2015.

Tek Ram and another

..... Appellants.

versus

Amar Singh and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. Dinesh Arora, Advocate for the appellants.

K.C.PURI, J.

Unsuccessful plaintiffs-appellants have directed this regular second appeal against the judgment and decree dated 22.11.2012 passed by Shri Jagjit Singh, Additional District Judge, Rohtak vide which the appeal preferred by plaintiffs-appellants against the judgment and decree 16.09.2010 passed by Shri Vivek Yadav, the then learned Civil Judge (Junior Division), Rohtak was dismissed.

4. Brief facts of the present case are that plaintiffs have filed suit for possession of the suit property on the plea that they are owners in possession of the agricultural land measuring 3 kanals 11 marlas as detailed

in the plaint. Defendants are wrongly mentioned as tenants in the revenue records. The plaintiffs have filed application for correction of girdawari of above mentioned land in the Court of Naib Tehsildar, Rohtak on 30.5.2002, which was decided in favour of the plaintiffs on 30.5.2002 and against the defendants. The plaintiffs asked the defendants about the decision and demarcation of the land. The defendants did not show their interest for demarcation, therefore, plaintiffs moved another application for demarcation of the above-mentioned land in the office of Naib Tehsildar, Rohtak dated 18.3.2003 and on enquiry on that application, encroachment by the defendants was found. Defendants did not desist the claim of the plaintiffs, hence this suit.

5. Upon notice, defendants appeared and the defence of the defendant No.1 was struck off vide order dated 21.4.2005. Vide order dated 25.5.2006 defendant No.3 proceeded against ex-parte. Defendant No.2 in his written statement has pleaded that the defendants are in possession of the suit land as tenants from the time of their father under the plaintiffs on payment of 1/3batai for the last more than 50 years. The defendants or their father never ejected through any court of law upto now. The order of Tehsildar, if any, is wrong and has no legal value. The Naib Tehsildar was not competent to correct the Girdwari in favour of the plaintiffs. The alleged order is without jurisdiction. The defendants are cultivating the suit land for the last more than 50 years from the times of their father Shri Bhagwana under the plaintiffs on payment of Batai Tihai. Denying all other averments, defendant No.2 prayed for dismissal of the suit.

6. Replication was filed. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiffs are owners in possession of the suit property detailed in para No.1 of the plaint ?OPP
2. Whether the defendants have encroached upon the suit property ? OPP
3. Whether the plaintiffs are entitled to the relief of possession ? OPP
4. Whether the defendants are tenants in possession of the suit property for the last 50 years ? OPD
5. Relief.

8. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence dismissed the suit of the plaintiff vide judgment and decree dated 16.09.2010.

9. Feeling aggrieved, the plaintiff preferred First appeal. The learned District Judge, Gurdaspur vide judgment and decree dated 22.11.2012 dismissed the appeal of the plaintiff.

10. Still feeling dissatisfied with the aforesaid judgments and decrees, the present regular second appeal has been directed by the plaintiff/appellant.

11. The appellant in paragraph No.09 of the grounds of appeal, has mentioned that following substantial question of law has arisen in the present regular second appeal :-

- i) Whether entry in the jamabandi without any other document in dependent of the said entry is sufficient to hold that the nature of occupancy is tenancy ?

12. I have heard learned counsel for the appellant and have gone through the case file.

13. Learned counsel for the appellants has submitted that defendants have encroached upon the portion of the suit property. So, they should have been held entitled to the possession of the suit property. The findings returned by both the Courts below that defendants are tenant in the suit property is not proved on the file. Khasra girdwari has been corrected in the name of the plaintiffs. Both the Courts below have failed to appreciate the real facts.

14. I have carefully considered the said submission but do not find any force in that submission.

15. There is concurrent finding of fact recorded by both the Courts below that defendants are the tenants over the suit property for the last so many years. The only remedy with the plaintiffs is to evict them in accordance with Tenancy Act and not forcibly.

16. Correction of khasra girdwari in favour of the plaintiffs are not binding on the defendants. The plaintiffs have taken the stand before Assistant Collector IInd Grade that entries in the name of predecessor-in-interest of Bhagwana are wrong since he has died. The case set up before Assistant Collector 2nd Grade is that they are in possession. The fact remains that tenancy of Bhagwana was never terminated by any Competent Court. After the death of Bhagwana, the entry makes the defendants entitled to retain possession unless evicted. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal.

14. Consequently, the present appeal is without any merit and the same stands dismissed.

15. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 25 , 2015
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