

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

**RSA NO. 1139 OF 2015 (O& M)
DECIDED ON : 06.05.2015**

Hari Chand

...Appellant

versus

Kamla and others

...Respondents

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

Present : Mr. Parminder Singh, Advocate.

K. C. PURI, J. (ORAL)

This is an appeal directed by the defendant/appellant against the judgment and decree dated 23.08.2014 passed by Ms.Narinder Kaur, Additional District Judge, Karnal, vide which the appeal preferred by the defendant against the judgment and decree dated 10.08.2011 passed by Shri Bhupinder Nath, the then Civil Judge (Senior Division), Karnal, was partly accepted but the plaintiffs were held entitled to claim rent for three years prior to 26.04.2010 by modifying the judgment of trial court in favour of the plaintiffs.

Briefly stated, the plaintiffs before the trial court filed suit for possession against the defendant with the averments that

Telu Ram son of Badama leased out the land measuring 6 kanals 15 marlas being 1/10th share of 67 kanal 16 marla as described in the head note of the plaint. Telu Ram died on 22.03.1998 and the plaintiffs are his legal heirs. The suit land was leased out for a period of 20 years i.e from 15.06.1981 to 14.06.2001 and their lease period expired on 14.06.2001. After the expiry of the lease period, the defendant has not handed over the vacant possession of the suit land. The plaintiffs have further pleaded that they are also entitled for mesne profits of the suit land for its unauthorized use and occupation after the expiry of period of lease. The defendant was requested several times to hand over the vacant possession but he failed to do so. Hence, the suit was filed.

Upon put to notice, the defendant filed written statement taking preliminary objections that the plaintiffs have no locus standi to file the suit; the plaintiffs have no cause of action; the civil courts have no jurisdiction; the plaintiffs are estopped from filing the suit. It was further pleaded that the suit is under value. The defendant, being in continuous possession has become the tenant by holding that the plaintiffs can file a petition under the Tenancy Act or under the Punjab Security of Land Tenure Act. During the pendency of the lease period, Telu Ram entered into an agreement to sell the suit land and after the expiry of the lease period, the defendant is in possession and is protected under Section 53-A of the Transfer of Property Act.

Even the defendant after the expiry of lease period has become

tenant holding over the suit property. It is denied that the plaintiffs are the legal heirs of Telu Ram.

Replication was not filed.

From the pleadings of parties, following issues were framed :

- 1) Whether the plaintiffs are entitled for a decree of possession as prayed for ? OPP
- 2) Whether the plaintiffs have got no cause of action and locus standi to file the present suit ? OPD
- 3) Whether this court has got no jurisdiction to try and entertain the present suit ? OPD
- 4) whether the plaintiffs are estopped from filing the present suit by their own act and conduct ? OPD
- 5) Whether the suit of the plaintiffs is under value ? OPD
- 6) Relief.

In order to prove their case, one of the plaintiffs Naresh Kumar appeared as PW-1 and examined Vinod Kumar as PW-2 and tendered certain documents.

On the other hand, defendant himself appeared as DW-1 and closed the evidence after tendering documents.

The learned trial court returned the findings on Issue No.1 in favour of the plaintiffs. Issues No.2 to 5 were decided against the defendant and consequently, the suit of the plaintiffs was decreed.

Feeling dissatisfied with the above said judgment and decree dated 10.08.2011 passed by Shri Bhupinder Nath, Civil Judge(Senior Division), Karnal, the defendant/appellant preferred first appeal which was partly accepted vide judgment and decree dated 23.08.2014 passed by Ms.Narinder Kaur, Additional District Judge, Karnal. However, the judgment was modified to the extent that plaintiff shall also be held entitled to claim rent of three years prior to 26.04.2010.

Feeling dissatisfied with the judgment and decree dated 10.08.2011 passed by Civil Judge (Senior Division), Karnal and judgment and decree dated 23.08.2014 passed by Additional District Judge, Karnal, the defendant has preferred the instant regular second appeal.

The appellant in para no. 10 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether the suit for possession in the availability of alternative remedy under Section 9 read with Section 14 (A) of Punjab Security of Land Tenure Act, 1953 to seek ejectment over the agriculture land is ever maintainable and thus finding of both

the courts below in contrary to this aspect are ever sustainable in the eyes of law ?

- 2) Whether by virtue of Section 14 of the Punjab Security of Land Tenure Act, 1953, issuance of no receipt of rent or no entry to this respect in the revenue record, can oust the claim of the tenant over the agriculture land under his occupation ?
- 3) Whether finding of both the court below in perversity of the evidence is ever sustainable in the eyes of law ?

Learned counsel for the appellant has submitted that the defendant/appellant can be evicted from the premises only under Section 9 read with Section 14-A of the Punjab Land Tenancy Act, 1953 (in short "the Act"). It is further submitted that once the relationship of landlord and tenant is established between the parties, the lessee can continue to remain in possession even after the expiry of terms of the lease. No termination of lease or tenancy can be there. To support this contention, he has relied upon authority "***Balkar Singh and another vs. Commissioner Jullundur Division, Jullundur and another***" 1989 (1) RLR 420.

I have heard learned counsel for the appellant and have gone through the said authority.

There is no dispute with the proposition of law that after the expiry of period of lease, the lessee becomes statutory

tenant but once the tenant denied the title of landlord, in that case the tenancy is determined and the owner is entitled to get the possession from that defendant. The defendant has taken a definite stand that during the period of tenancy, Telu Ram the original owner, has entered into agreement. No such document has been produced before the trial court. So, virtually the defendant has denied the title by taking a stand of becoming in possession of the property under the part performance of the alleged agreement to sell. He has failed to prove that agreement. Even during the course of arguments, he has not pointed out the said agreement. Once the defendant has denied the tenancy, he becomes a trespasser and both the courts below have rightly admitted the suit of the plaintiff. The plaintiff has been rightly held entitled to mesne profits. So, the appellant cannot get the benefit of authority ***Balkar Singh and another's case (supra)***, as in that case there was no dispute that the tenancy has been determined by denying the title of the owner.

So, in view of the above discussion, the questions of law raised above, stand determined against the appellant. Consequently, the appeal is without any merit and the same stands dismissed.

MAY 06, 2015
shalini

(K. C. PURI)
JUDGE