

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

Regular Second Appeal No.2601 of 2015 (O&M)

Date of decision: 16.10.2015

Nissar Ahmad

... Appellant

versus

Bashir Mohammad

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.S. Budhwar, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

CM No.6689-C of 2015

For the reasons stated in the application, delay of 329 days in filing the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.2601 of 2015 (O&M)

1. The appeal is at the instance of the defendant who resisted the suit by person claiming to be a tenant of the property but the defendant's predecessor sought for a right of preemption in relation to the property that was transferred without affording the first right of purchase. The defendant had been served but did not

enter the contest, and the court dismissed the suit all the same, holding that the plaintiff had not established his possession. He had actually brought the concurrence of PW2 also who spoke about the fact that the plaintiff and his father had been tenants and he had known them, cultivating the property for 35/40 years. The plaintiff had also placed on record the jamabandis Exs.P1 and P2 wherein his possession was recorded over the suit land as tenant on payment of 1/3rd batai. Before the appellate court, the plaintiff also sought to produce some additional documents to show his continuance in possession but the court rejected the same but on the basis of the records Exs.P1 and P2 and the evidence of adjoining landowner found that the plaintiff was in possession. The court also made reference to the fact that the plaintiff had filed a suit for bare relief of injunction that his own possession could not be disturbed and the court had found his possession to have been established and granted a decree. The certified copies of decree and judgment were also filed. The appellate court, therefore, held that the trial court was in error in finding that the plaintiff had not proved his possession as a tenant and reversed the decision and granted the decree for preemption.

2. The learned counsel for the defendant also points out that the tenant had not actually proved the payment of rent to the landlord and the Punjab Tenancy Act requires a tenant to be a person

who ought to have made the payment of rent. There was no proof of payment of rent, according to the counsel. The further argument was that the plaintiff himself was not competent to file a suit and that the property had been taken only on lease by the plaintiff's father and the plaintiff cannot come by possession by mere affidavit from the father unless the change of tenancy had been modified with the concurrence of the landlord. There was no such concurrence. I reject both these arguments as untenable. As regards the actual payment of rent, Section 4(5) of the Punjab Tenancy Act contemplates the tenant as a person, who shall be liable to pay rent. If there is a default, it might give rise to an action by a landlord for recovery or ejectment in the manner contemplated under the Act, but cannot disqualify a tenant who was "liable to pay rent" to press for a right of preemption in the manner contemplated under the Act. The actual fact of payment of rent even if not established, the liability to make such payment was itself recorded under Exs. P1 and P2 that he was holding the property as tenant on payment of 1/3rd batai. It should be understood as giving rise to a liability and it is irrelevant that the actual payment was not made. The further argument that the lease was only in favour of the father and the plaintiff did not have locus standi is a contention made without any pleading. I have already observed that the defendant did not enter a contest at the trial and the court dismissed the suit in spite of the fact that the defendant

filed no statement, took a plea as regards locus standi and had no contention to make that the plaintiff was not a tenant. The appellate court had made reference to Exs.P1 and P2 which recorded the plaintiff as a tenant on payment of 1/3 batai and also referred to the fact that he has proved in possession by a decree of injunction and the denial of the relief by the trial court that possession was not established was expressly found to be bad by the appellate court. The decree granted in favour of the plaintiff was justified and I find that there exists no substantial question of law for consideration in second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

16.10.2015
sanjeev