

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5484 of 2015 (O&M)
Date of Decision : 21.12.2015

Avtar SinghAppellant

Versus

Santokh Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.S. Kahlon, Advocate
for the appellant.

Surinder Gupta, J.

Admittedly plaintiffs-respondents are owner of suit land measuring 3 *kanals* 18 *marlas* bearing *khewat* No. 792, *khatauni* no. 974, *hasra* nos. 487/3 (0-2), 488/2 (0-15), 489/2 (0-2), 490 (0-14), 491 (2-5), as per *jamabandi* for the year 2007-2008 situated in village Raipur Rasoolpur, *Tehsil* and District Jalandar. They claimed possession of the suit land from defendant alleging his possession over the suit land as illegal and unauthorized.

2. Defendant-appellant contested the claim of plaintiffs *inter alia* pleading that suit property was given to him in exchange in the month of March, 2007 and in lieu thereof land measuring 4 *kanals* 4 *marlas* was given to plaintiffs out of *khewat khatauni* no. 750/946, 947, 753/950, 938/1161, *hasra* nos. 496, 509, 521/1, 524/2, 305, 291/1 which was purchased by defendant from Dr. Avinash Dhillon for a consideration of ₹ 16,80,000/- vide sale deed dated 29.01.2007.

3. The defendant failed to prove the exchange. However, learned Civil Judge (Junior Division), Jalandhar dismissed the

suit of plaintiffs making out a case for defendant that he is in possession over the suit land with consent/permission of plaintiffs as he was paying '*hala*' amount of ₹ 250/- per annum to plaintiffs. Plaintiffs were asked to avail the remedy for ejectment of defendant from the suit land as available to them under the law.

4. In appeal, Ist Appellate Court set aside the judgment of Court below with the observation that the defendant had not pleaded that his possession over suit land was as a tenant, as such, the trial Court has erred while recording the finding that possession of defendant over suit land was as a tenant.

5. Learned counsel for the appellant has argued that though the defendant-appellant has not taken the plea that his possession over the suit land is as tenant but in view of admission by plaintiffs that defendant had been paying '*hala*' which is in the shape of rental, to plaintiffs, his possession over suit land was rightly held as tenant by trial Court.

6. The above argument of learned counsel for the appellant has no basis and is rejected. In the revenue record possession of the defendant-appellant is not recorded as tenant. He has not claimed his possession over the suit land as tenant in the pleadings or even while appearing as DW-1, he has nowhere claimed that his possession over the suit land is as a tenant. In the absence of any pleadings, learned Civil Judge (Junior Division), Jalandhar has committed a grave error of law while making out a new case for the defendant to protect his possession over the suit land.

7. Learned counsel for the appellant has argued that admission is the best evidence unless it is shown to have been wrongly made and has relied upon observations of the Apex Court in cases of **Nathoo Lal vs. Durga Prasad, 1954 AIR (SC) 355** and **Delhi Transport Corporation vs. Shyam Lal, 2004 (8) SCC 88**.

8. So far as proposition of law that admission by the party is best evidence, is concerned, the same is not disputed. However, admission is required to be with regard to some pleadings or matter in issue. It is neither the case of plaintiffs nor the case of defendant that possession of defendant-appellant over the suit land at any point of time was as a tenant. Mere saying of plaintiff while appearing as witness that defendant was paying ₹ 250/- per annum as 'hala' in no manner can be taken as proof of status of defendant-appellant as tenant over the suit land. Even in the revenue record he is not recorded to be in possession of the suit land as tenant.

9. In view of above, I find no legal or factual infirmity in the judgment of Ist Appellate Court calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

December 21, 2015
jk

(SURINDER GUPTA)
JUDGE