

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 797 of 2015 (O&M)
Date of Decision : 07.12.2015

Harish Sharma

....Appellant

Versus

Bhupinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajesh Lamba, Advocate
for the appellant.

Surinder Gupta, J. (Oral)

RSA No. 797 of 2015

Heard.

2. This is second appeal against the judgment passed by Civil Judge (Junior Division), Faridabad whereby the suit filed by Bhupinder Singh seeking symbolic possession by way of pre-emption in respect of suit land on payment of sale consideration mentioned in sale deed dated 05.12.2006 in favour of defendant no. 1-appellant-Harish Sharma was decreed.

3. Plaintiff claimed the right of pre-emption on the ground that he is in possession of suit land as tenant initially under the original landlord and then under defendant no. 2-Tilak Raj. Sale deed dated 05.12.2006 was without any notice to plaintiff as required under Section 19 of the Punjab Pre-Emption Act, 1913.

4. The appellant in his written statement denied the status of plaintiff as tenant over the suit land and alleged that the land is *banjar kadim*. He further alleged that suit land was in shape of plot which he had purchased for a sum of ₹ 10 lacs.

Defendant-respondent no. 2 also contested the claim of plaintiff in a separate written statement.

5. Learned Civil Judge (Junior Division), Faridabad decreed the suit with observation that plaintiff-respondent no. 1 is proved to be in possession of suit land as tenant and this fact is specifically mentioned even in the sale deed in favour of appellant. The relevant observations to this effect in paras 16 and 17 of the judgment are reproduced as follows:-

“16. Moreover, in the sale deed dated 05.12.2006, Ex. P7, there is clear recital marked as point “A to A” to the effect that the possession of suit land is with gair maurusi tenant. This admission in the sale deed dated 05.12.2006 further corroborates the fact that plaintiff is tenant and only ownership rights were transferred vide that sale deed, Ex. P7.

17. Further, in the written statement, the defendant has argued that the land in question is “Banjar Land”. However, perusal of the jamabandi shows that land has been described as 'Narmot' and further Khasra Girdawaris placed on record as Ex. P6 and Ex. P9 show that on the land, generally one crop is harvested. This fact corroborates with the nature of land 'Narmot' which comes under the category of rainfed agriculture. Hence, there is no force in the contention of defendant. The defendant has placed on record photographs on record in furthering his contention that suit land is not being put to agriculture use. However, the photographs placed on record are only marked documents and as such, cannot be read in evidence.

6. The above averments were also affirmed by Ist Appellate Court.

7. On perusal of judgments of Courts below, I find that the findings of facts recorded therein are based on documentary evidence on record. Nothing has been pointed out that these findings have resulted due to misreading of evidence and misinterpretation of the same.

8. No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

CM No. 2371-C of 2015

This is application under Section 5 of the Limitation Act seeking condonation of delay of 418 days in filing the appeal.

As the appeal has been dismissed on merits, the question of condonation of delay is only of academic interest. There is delay of 418 days in filing the appeal. The appellant has alleged that the delay has taken place as he was ill and was advised complete bed rest but this contention of the appellant is not supported by any medical evidence. No reason to condone the delay of 418 days in filing is made out.

Dismissed.

December 07, 2015
jk

(SURINDER GUPTA)
JUDGE