

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

(1) CM No. 11479 C of 2015 and
RSA No. 6012 of 2014 (O&M)
Date of decision: November 17, 2015

Puran Nath

...Appellant

Versus

Sant Singh and others

...Respondents

(2) RSA No. 2274 of 2015 (O&M)

Puran Nath

...Appellant

Versus

Sant Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. Kuldip Sanwal, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

CM No. 11479 C of 2015

For the reasons stated in the application, the Regular Second appeal is restored to its original file.

CM No. 14284 and 14285 C of 2015

For the reasons stated in the applications, delay in re-filing as well as filing the appeal is condoned.

Main case

1. This order shall dispose of the above titled two appeals being

connected, having similar set of facts and involving common questions of law.

2. The defendant is the appellant before this court. The plaintiffs filed respective suits for a declaration that the entries found in the girdawars to be mutated in favour of the defendants was fraudulent and not binding on the plea that it was illegally taken in the name of the 4th defendant in connivance with defendants No. 2, 3 and 5. The plaintiffs admittedly were the tenants and they have been entered as such for nearly three decades prior to the suit. The plaintiffs' contention was that the defendants forcibly attempted to take possession from the plaintiffs on 13.2.2004, damaged the crops resulting in a complaint lodged against them in FIR No. 108 dated 13.2.2004. Subsequently, the defendants brought about change in the revenue entries with the connivance of other revenue officials. The plaintiffs had actually given a complaint also before the Human Rights Commission against the police officials and their attempt to wrest possession and make illegal entries through a *rapat roznamcha* prepared on 31.8.2002. The trial court found the plaintiff's claim to the status of the tenant to have been established since the year 1972 and granted the decree. The judgment was confirmed in appeal.

3. Learned counsel states that the details of fraud had not been mentioned by the plaintiffs and the burden of proof had not been discharged. The appellant claims to be *Mohitmim* of the Dera whose property was admittedly leased out originally to the plaintiffs. If the plaintiffs status as that of tenants was an admitted fact, and if it were to be

contended that such status had been modified and the property had been voluntarily delivered by the tenant to the landlord, which in this case is the Dera acting through the *Mohitmim*, the burden of proof is inverted under Section 109 of the Indian Evidence Act requiring the person who seeks to contend that the relationship of the landlord and tenant does not any longer exist ought to prove the same. Even on issue relating to the undue influence said to have been practised on the plaintiffs for giving their consent to a mutation, Section 16 of the Contract Act, which defines undue influence, marks out exception to situation where a person who is in a position to dominate the will of the other would be presumed to have committed undue influence in cases where a person who holds a real or apparent authority over the other, where he stands in fiduciary relationship. In a situation of landlord and tenant of rural property, I would take such presumption as available to a tenant against a Dera which controls a large estate of the property. Although the prayers in the suits were couched in terms to suggest that the plaintiffs were seeking for entries in khasra girdawaris to be null and void, they were, in fact, trying to assert their own rights to continue in possession as tenants and if the defendants were not able to show that the plaintiffs voluntarily surrendered the possession of the property, the revenue entry ought to have followed the actual possession held by tenants. If the entry had been made in the name of the defendants, it was wrong and against the actual feature of the property being in possession of the plaintiffs. The decrees granted by the two courts below were justified and they would call for no interference.

4. Both the second appeals are dismissed.

November 17, 2015
prem

(K.KANNAN)
JUDGE