

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

**RSA-3219-1987 (O&M)  
Date of decision : 19.10.2016**

Bishan Singh

... Appellant

Versus

Salehdi Singh (deceased through LRs)

... Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Amit Jain, Advocate  
for the appellant.

Ms. Alka Sarin, Advocate  
for the respondent.

Mr. Manoj Dhankar, AAG, Haryana.

\*\*\*\*

**AMIT RAWAL, J. (ORAL)**

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit for a decree for possession of land bearing Khewat No.857 Khata No.1003/1 Rect. No.162 Killa No.19/1 (1-0) situated in Village Jatauli, Tehsil Pataudi, District Gurgaon, had been dismissed, in essence, the judgment and decree of the trial Court had been set aside.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant-plaintiff submits that the suit aforementioned was filed on the ground that the appellant-plaintiff claiming to be owner of the property on the ground that in the partition proceedings, the property had fallen to his share and the other co-owner. The suit land was allotted vide order dated 22.04.1972 passed by the Assistant Collector 1<sup>st</sup> Grade, Rewari and

regarding partition, mutation bearing No.3173 was sanctioned on 25.09.1973, became final. The other co-sharers before the partition, were, thus, liable to surrender the possession of the suit land to the appellant-plaintiff which was not done and in this background of the matter, the suit aforementioned was filed. The defendant had taken the stand that the Civil Court had no jurisdiction to entertain and try the suit.

He submits that though the trial Court decreed the suit, but the lower Appellate Court has erroneously reversed the findings on the ground that the respondent-defendant was a tenant, much less, also a co-sharer, thus, urges this Court for setting aside the findings under challenge.

*Per contra*, Ms. Alka Sarin, learned counsel appearing on behalf of the respondent-defendant submits that during the pendency of the appeal, the land in dispute was acquired under the Erstwhile Land Acquisition Act, 1894 (for short 'the 1894 Act') which has resulted into the decision in favour of the tenant and not only on the basis of the judgment and decree rendered by the lower Appellate Court, but also on the basis of the evidence brought on record. She submits that RFA No.1455 of 2015 is on behalf of the appellant had already been filed.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the facts noticed above are not in dispute. The question which is required to be determined whether preceding to the filing of the proceedings, status of the appellant-plaintiff being co-sharer and also a tenant can be adopted, the answer is in negative. The appropriate remedy for the appellant-plaintiff, now is, that since the land has been acquired, either they were to seek the stay of the proceedings initiated under 1894 Act at that time, in order, to avoid the finding which

would have far reaching consequences with the decision of RFA, thus, the appellant shall have remedy to assail points occurred herein in competent Court i.e. proceeding reached upto this Court arising out of proceedings initiated under Section 30 of the 1894 Act.

The findings rendered by the lower Appellate Court would not come in its way and the matter would be decided on merits i.e. on preponderance of the oral and documentary evidence.

With the aforesaid observations, the appeal stands disposed of.

19.10.2016  
Yogesh Sharma

( AMIT RAWAL)  
JUDGE

✓

Whether speaking/reasoned    Yes/ No

✓

Whether Reportable            Yes/ No