

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

**RSA No. 1080 of 2010 (O&M)
Date of decision: 11.05.2016.**

Dharam Pal and others

.....Appellants

Versus

Birpal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Jagdish Manchanda, Advocate
for the appellants.

Mr. Ashwani Verma, Advocate
for respondents No. 1 to 10 and 14 to 17.

JITENDRA CHAUHAN, J.

This Regular Second Appeal has been filed by the plaintiffs against the judgment and decree dated 29.08.2009, passed by Additional District Judge, Faridabad vide which the appeal filed by the plaintiffs was dismissed and the judgment and the decree dated 15.03.2008, passed by Civil Judge (Jr. Divn.), Palwal was upheld and the suit of the plaintiffs was dismissed.

In brief, the plaintiffs filed suit for declaration and permanent injunction with the averments that late father of plaintiffs No. 1 to 3 and husband of plaintiff No. 4, namely Sarup Singh was tenant in the possession of agricultural land to the extent of 821/990th share of the total land measuring 40 Kanals situated within the revenue estate of Behrampur, Tehsil Palwal District Faridabad. Late Sarup

Singh was the owner in possession of 169/990th share of the said land. He died on 23.06.2002 and is survived by the plaintiffs. The plaintiffs through their ancestors had been cultivating the land in dispute under the defendants at Chakota of Rs. 0.35 per kanal per year for the last more than 50 years. The said Chakota had neither been increased nor changed. It was orally agreed between the parties that the defendants would never dispossess the plaintiffs from the suit land. There is a custom in the village by virtue of which such type of tenants paying nominal rate of rent have acquired ownership/occupancy rights in the land. The plaintiffs have also acquired occupancy rights in the suit land and the defendants' right of ownership has extinguished. So, the plaintiffs are entitled to be declared as owners in possession of the suit land in terms of Sections 5 and 8 read with Section 10 of the Punjab Tenancy Act. The plaintiffs asked the defendants to get the revenue entries corrected and admit the plaintiffs as owners of the land in dispute but they refused. Hence, the suit for declaration and permanent injunction.

Upon notice, the defendants No. 1 to 11 and 13 to 17 filed written statement and contested the suit. The stand of the defendants was that Sarup Singh was never inducted as tenant in the suit land. The factum of cultivation of land by the plaintiffs or their ancestors was also denied. In fact, the land is owned and possessed by the plaintiffs and the defendants jointly, so, the question of ejectment of the plaintiffs does not arise. The acquisition of occupancy rights by the

plaintiffs was specifically denied.

Both the parties led their respective evidence on the issues framed. The trial Court after evaluating the evidence came to the conclusion that the plaintiffs and the defendants were owners in possession of the land jointly. The tenancy as alleged by the plaintiffs was not proved. Consequently, the suit was dismissed vide judgment and decree dated 15.03.2008, passed by the trial Court.

Feeling aggrieved, the plaintiffs filed an appeal before Additional District Judge, Faridabad. The appeal was dismissed vide judgment and decree dated 29.08.2009. Hence, the present regular second appeal at the behest of the plaintiffs.

Learned counsel for the appellants contends that both the Courts below have misread the evidence. There is sufficient evidence on the record in the shape of the revenue entries from 1971-72 till 2001 to 2002. Despite there being overwhelming documentary evidence on record showing possession of the plaintiffs over the suit land as tenants, the Courts below have wrongly turned down their plea of tenancy.

On the other hand, the learned counsel for the respondents/defendants has submitted that the Courts below have rightly dismissed the suit. The plaintiffs have failed to show that they are the tenants over the suit land. A co-sharer cannot claim tenancy.

I have heard the learned counsel for the parties and have gone through the case file.

The sole question arising for consideration in the present appeal is whether the plaintiffs, who are co-sharers in possession of the land with the defendants jointly, have acquired occupancy rights over the suit land. The claim of the plaintiffs is that their father Sarup Singh was inducted as tenant at Chakota of Rs. 0.35 per kanal per year. They are in possession of the suit property as tenants for the last 50 years. At the same time, it is the case of the plaintiffs that they are co-owners of the suit property to the extent of 169/990th share. Admittedly, the land has not been partitioned as on date. If the claim of the plaintiffs is examined minutely, it falls to the ground by the pleading of the plaintiffs themselves. On the one hand, the plaintiffs claim that their father Sarup Singh was owner of the land to the extent of 169/990th share whereas, it is also their claim that they are in possession of land to the extent of 821/990th share as tenant. The fact that the suit land is joint has not been denied by the plaintiffs. This Court is of the opinion that if the land is joint between the parties, no one can claim to be the owner in any particular part of the suit land. In other words, every co-sharer has a right over each and every inch of the joint land. Possession of one co-sharer over a parcel of land is also deemed to be the possession of other co-sharer, who is not in possession. If the land is joint, the plaintiffs cannot be the tenants over their own land. Therefore, no right of occupancy accrues to the plaintiffs. This aspect of the matter has been well-examined by the Courts below. The Courts below were alive to the proposition that a co-sharer is owner of each

and every inch of land. Consequently, he cannot be a tenant over his own land. There is absolutely no flaw in the judgments and decrees passed by the Courts below. No substantial question of law is involved in the present regular second appeal. Thus, the appeal is dismissed.

11.5.2016
SN

(JITENDRA CHAUHAN)
JUDGE