

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

1. RSA No.2381 of 2010 (O&M)
Date of decision : 17.10.2016

M/s Manoj Exim. Pvt. Ltd.

...Appellant

Versus

Satbir and others

..Respondents

2. RSA No.2383 of 2010 (O&M)
Date of decision : 17.10.2016

M/s Manoj Exim. Pvt. Ltd.

...Appellant

Versus

Om Parkash and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate for the appellant.

Mr. B.R. Mahajan, Sr. Advocate with
Mr. Prateek Mahajan, Advocate for respondent(s).

Mr. Vikram Punia, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two regular
second appeals.

The appellant-defendant No.1 is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit of the respondent-plaintiff seeking pre-emption by decree of declaration challenging the sale deeds dated 20.09.2004, 09.05.2008 executed by defendant Nos.2 to 14 have been set aside.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, submits that suit aforementioned was dismissed by the trial Court as respondent-plaintiff failed to prove the tenancy, except solitary entry in the jamabandi for the year 1967-68, of payment of rent/batai. In the earlier jamabandi, in the relevant coloumn batai is reflected. Documents placed on record are post sale deed i.e. submission of the application dated 08.06.2006 for correction/issuance of farad badar. Interim order qua payment of rent is, dated 20.10.2006, whereas final order is dated 28.02.2007. In support of his contention, also relies upon judgment dated 06.03.2009 rendered by this Court in RSA No.2120 of 2005 to show that status of the respondent was not of actual tenant, but as gair marusi, who as per the provisions of Section 15(1)(a) of the Punjab Pre-emption Act is not entitled to pre-empt the sale.

Per Contra, Mr. B.R. Mahajan, learned senior counsel assisted by Mr. Prateek Mahajan and Mr. Vikram Punia, Advocate submits that recital in the sale deed, show the nature and character of the respondent-plaintiff that of tenant. The corrections, in view of the orders dated 20.10.2006 and 28.02.2007 were made, as there was error of non-reflecting of the payment of rent, under relevant column. Owner, in written statement, admitted the relationship of landlord and tenant, therefore, status of

respondent-plaintiff cannot be equated with that of gair marusi tenant. Gair Marusi Tenant would be a tenant without payment of rent, whereas on the contrary, jamabandi for the years 1963-64 and 1968-69 Ex.P1 and Ex.P2 reveals the respondent to be a tenant, therefore, judgment cited (Supra) is not applicable to the facts and circumstances of the case, thus urges this Court to affirm findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and record of Courts below and of the view that there is no force and merit in the submission of Mr. Akshay Bhan, for, jamabandies Ex.P1 and Ex.P2 as noticed above, shows that respondent-plaintiff had been paying rent, thus, would not be equated with status of Gair Marusi, therefore, entitled to pre-empt the sale deed, in case, intended to be sold by the landlord to the third party. The order of farad badar was passed on 08.06.2006, resultantly in the subsequent jamabandies, under the relevant column, there is reflection of payment of rent and in view of the candid admission in the written statement of the landlord, the factum of tenancy is fortified. The decision referred above pertains to the question whether Gair Marusi would be entitled to pre-empt the sale deed, answer was in negative, but instant case, in view of aforesaid observation, is not of such nature.

Recital in the sale deed, also reflected the status of the respondent-plaintiff as tenant. All these documents have been considered by the lower Appellate Court being last Court of facts and law.

As per the judgment and decree dated 28.01.2010 of the Lower Appellate Court, respondent-plaintiff was directed to deposit the sale consideration which according to Mr. Mahajan, has been deposited on

15.02.2010 it is only, thereafter application for execution was filed on 18.02.2010 and has been satisfied.

For the reasons aforementioned, I do not intend to differ with the findings rendered by the lower Appellate Court.

Accordingly, appeals are, dismissed.

17.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No