

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

RSA-5410 of 2012 (O&M)

Date of decision: 12.02.2016

Anand Parkash Sharma

...Appellant(s)

Versus

Rampat and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S. Khurana, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 17.12.2009, passed by the Civil Judge (Jr. Division), Rewari (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant had been dismissed; and judgment and decree dated 28.09.2012, passed by the learned Additional District Judge, Rewari (for short, 'the first Appellate Court'), whereby, the findings recorded by the learned trial Court had been affirmed.

The plaintiff filed suit for permanent injunction restraining respondent-defendant Nos.1 and 2, from interfering in

the cultivating possession of the plaintiff over the suit property, detailed in the plaint, with the consequential relief. The trial Court, vide impugned judgment and decree dated 17.12.2009, dismissed the suit of the plaintiff.

The appeal filed thereagainst by the plaintiff was also dismissed by the learned first Appellate Court, vide impugned judgment and decree dated 28.09.2012.

Hence, this appeal at the behest of the plaintiff.

Vide order dated 03.12.2015, the learned counsel for the appellant sought time to verify whether the appeal against the judgment, decreeing the counter claim, was filed by the plaintiff-appellant before the first Appellate Court or not. It is stated that only one decree was drawn, which was assailed before the learned first Appellate Court and the present appeal arises therefrom. The learned counsel contends that the land in question was given towards 'Punarth', therefore, cannot be taken back. He cites ***Rampat Vs. Mangal, 2009(4) PLR 59.***

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

The suit of the plaintiff was dismissed by the learned trial Court by holding that the suit property was Dholi land and the lease was for 99 years, which amounts to permanent alienation. The terms and conditions of the lease also show that the lessee

could not be evicted from the land before the expiry of the period of 99 years. Therefore, it was a lease from generation to generation and the proprietor could not take back possession, even if the Dholidar failed to pay the lease money. The appeal preferred by the appellant was also dismissed by holding that the lease of the Dholi land for 99 years would amount to an alienation. The lease was signed by Krishan Murari on behalf of Harki Devi. Once it is proved that the land in question was Dholi in nature, it could not have been leased out for a period of 99 years, as the same would amount to permanent alienation of the property which is not permissible. There is no evidence on record to show that the land was given towards 'Punarth', thus, the case law ***Rampat*** (supra) is not applicable in the facts and circumstances of the present case.

It is also to be noticed that the appellant is not in possession of the suit land, which fact is clear from his own admission that lease money would be paid as and when the land is received.

No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

12.02.2016
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(JITENDRA CHAUHAN)
JUDGE