

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

RSA-2634-2013 (O&M)

Date of decision: 22.03.2016

Chanderpati and another

...Appellant(s)

Versus

Richhpal and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

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

JITENDRA CHAUHAN, J.

CM-6985-C-2013

Heard.

For the reasons mentioned in the CM application, which is duly supported by an affidavit of appellant No.2-Prem Singh, delay of 35 days in filing the present appeal is condoned, subject to all just exceptions.

RSA-2634-2013

The instant regular second appeal has been preferred against the judgment and decree dated 06.10.2010, passed by

learned Civil Judge (Junior Division), Bhiwani (for short, 'the trial Court'), whereby, the suit of the plaintiff-respondents has been partly decreed; and judgment and decree dated 10.01.2013, passed by the learned District Judge, Bhiwani, (for short, the first Appellate Court), whereby, the appeal preferred by the defendant-appellants against the impugned judgment and decree dated 06.10.2010, of the trial Court, has been dismissed.

The plaintiffs filed a suit for declaration to the effect that they are owners in possession of agricultural land comprised in khewat No.11/7 khatoni No.85 khasra No.139/6 min North (2-0), 140/1/1(7-7), 10(8-0), 11 (8-0) kitte 3, measuring 25 kanals, 7 marlas, situate in the revenue estate of Village Sagban, Tehsil Tosham, District Bhiwani, vide jamabandi for the year 2002-2003, having acquired occupancy rights under Sections 5 and 8 of the Punjab Tenancy Act, and by virtue of vesting of Proprietary Rights (Occupancy Tenancy) Act, 1953, along with a consequential relief to restrain the defendants from dispossessing the plaintiffs from the suit land and also from alienating the same to any other person.

The suit of the plaintiffs was partly decreed by the learned trial Court by holding that the plaintiffs have successfully proved their claim to the extent of 41/42 share in the suit land i.e.

pertaining to the share of defendants in the suit land. Further, the defendants were restrained from alienating the suit land.

Aggrieved against the judgment and decree passed by the learned trial Court, the defendant-appellants preferred an appeal before the learned first Appellate Court, which dismissed the appeal of the defendant-appellants, vide impugned judgment and decree dated 10.01.2013.

Hence, this appeal at the behest of the defendants.

It is contended that the learned Courts below failed to appreciate the fact that Harbhaj, the father of the plaintiffs, expired on 24.04.1964, whereas, the revenue records produced on record in the form of jamabandis for the years 1967-68 to 2002-03, show him (Harbhaj) to be in possession. Thus, the revenue record reflecting the possession of Harbhaj beyond the date of his death is factually incorrect. The plaintiffs have failed to prove as to who was the original owner of the suit land and by whom and when, said Harbhaj was inducted as tenant over the same.

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

As per Section 5(2) of the Punjab Tenancy Act, if a tenant proves that he has continuously occupied land for 30 years

and paid no rent thereof beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of Clause (a) of sub section (1). In the present case, the plaintiffs have successfully proved on record that they are in continuous possession as tenants for more than 30 years and thus, have fulfilled the requirement of Section 5(2) of the Punjab Tenancy Act. The fact that the entries in the revenue record were continuing in the name of Harbhaj even after his death does not cast any adverse affect on the case of the plaintiffs inasmuch as in the sale deed dated 20.10.2006, Mark A, the original vendors of defendant No.1 have admitted the possession of the tenants over the suit land. Further, it was stipulated that it would be the responsibility of the vendee to take actual physical possession of the land from the tenants and the vendors would not have any responsibility in that regard. This very document goes a long way to prove the possession of the plaintiffs over the suit land. Thus, this Court is of the opinion that the plaintiffs have rightly been given declaration sought for. There is a concurrent finding of fact that the plaintiffs are tenants over the suit land on nominal rent. The defendants have rightly been restrained from interfering into the peaceful

possession of the plaintiffs. The concurrent finding of fact recorded by the learned Courts below does not call for any interference in the Regular Second Appeal. There is no substantial question of law in the present Regular Second Appeal.

Dismissed in limine.

22.03.2016
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(JITENDRA CHAUHAN)
JUDGE