

RSA No.2678 of 2015

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

RSA No.2678 of 2015

Date of Decision: January 11, 2016

Ram Kishan & others

...Appellants

Versus

Smt. Omwati and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Rajesh Lamba, Advocate
for the appellants.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Palwal, dated 06.09.2012, whereby, the suit for declaration to the effect that the appellant-plaintiffs are in possession of the land detailed in the body of the suit being tenants and therefore, in the light of Section 5 of the Punjab Tenancy Act, 1887 (hereinafter referred to as 'the 1887 Act'), have become the owners of the property in question as also the suit for injunction restraining the respondent-defendants from interfering in any manner in the property in question, stands dismissed, appeal against which preferred has been dismissed by the Additional District Judge, Palwal, on 11.11.2014.

It is the contention of the learned counsel for the

appellants that the appellant-plaintiffs are in possession of land as tenants for the last 70 years and this aspect has been established on the basis of the revenue records which have been placed on record. He contends that except for the entries in the jamabandis for the year 1950-51, Ex.P-6 and P-7 respectively, where possession is shown of the respondent-defendants, the entries with regard to the tenancy are in favour of the appellant-plaintiffs and on that basis, being in possession of the land stands established. He contends that because of the continuous possession over the property in question, they have become the owners of the property in question under the provisions of the 1887 Act. He, accordingly, contends that the judgment and decree passed by the Courts below cannot sustain on this aspect.

Learned counsel for the appellants further contends that even if on the basis of the earlier jamabandis which have not been produced on record specifically for the year 1953-54, the possession, in any case, as per jamabandi 1958-59, of the predecessor in interest of the appellants having been established, the injunction should have been granted. He prays that the judgments and decree passed by the Courts below deserve to be set aside and the suit of the appellants decreed.

I have considered the submissions made by the learned counsel for the appellants and on perusing the judgments impugned

herein, find that the Courts below have rightly appreciated the evidence brought on record. As per the provisions contained in Section 5 of the 1887 Act, the possession as a tenant should have been established on 15.06.1952. Admittedly, jamabandis for the year 1950-51, Ex.P-6 and P-7 clearly establish that the respondent-defendants were in possession of the suit land. The jamabandi for the year 1953-54 has also not been produced rather withheld, although a plea has been taken that the same is not traceable but no evidence to this effect has been produced by the appellant-plaintiffs and therefore, the bald assertion of the counsel for the appellants cannot be accepted. The relevant entries as per the revenue records on the appointed date showing the possession of the appellant-plaintiffs as tenants being absent, the right which is claimed by them cannot be stated to have been established under the statute. The findings, thus, recorded by the Courts below on this aspect cannot be faulted with.

As regards the contention of the learned counsel for the appellants with regard to the claim of injunction qua interference in the suit property, suffice it to say that the basic claim was for declaration to the effect that they should be declared the owners in possession of the land as per Section 5 of the 1887 Act, the said claim of declaration having been declined although it is asserted that the possession on the basis of the evidence stands established but

would not be acceptable in toto as has been prayed for, however, if the possession is of the appellant-plaintiffs over the suit land, they would be entitled to be dispossessed in accordance with law.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

January 11, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**