

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5223 of 2015 (O&M)

Date of Decision: 17.03.2016

Prem Chand and Others

... Appellant(s)

Versus

Ram Dass and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Manoj Kumar Sood, Advocate
for the appellant(s).

Mr. Johan Kumar, Advocate
for the caveator/respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the plaintiffs, against the judgment & decree dated 26.8.2015, passed by learned Additional District Judge, Palwal, whereby the judgment & decree dated 18.7.2013, passed by learned Civil Judge (Senior Division), Palwal, was affirmed.

For the sake of convenience, parties are being referred to as per their status before the Court of first instance.

Relevant facts of the case that plaintiffs had filed a suit for permanent injunction restraining the defendants from interfering into

their peaceful possession of land measuring 20 kanals 14 marlas comprised in khewat/khatoni No. 160/180, rectangle No. 47, killa No. 16(1-10), rectangle No. 48, killa No. 11/2(5-12), 12/2(5-12) and 20(8-0) situated in village Hassapur, Tehsil Palwal, District Faridabad as per jamabandi for the year 2001-02. As per plaintiffs, Nathi son of Baldey was tenant in possession on the suit land under the Central Government. Nathi died on 17.3.1994 and the suit land was inherited by defendants No.1 to 3. They had become tenant in possession of the suit land after the death of their father. The Central Government issued a Scheme under which tenant on the land of custodian before 1995 was entitled to purchase the same on payment of such price, as determined. The proceedings of purchase were pending before the Sales officer, Faridabad. Due to death of Nathi, defendants No.1 to 3 inherited the tenancy rights and became tenants in possession of the suit land w.e.f. 17.3.1994 and defendants No.4 to 6 have no right to inherit the tenancy rights under Section 8 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as "the Act") as only the son, widow and mother are entitled to inherit tenancy rights. The daughters and grand daughters have no right to inherit tenancy rights. Defendants No.4 to 6 are married and grand daughter of Nathi.

Defendants No.1 to 3 executed an agreement of sale dated 5.5.2005 in favour of plaintiffs No.2 & 3 for a consideration of ₹ 1,00,000/- and received a sum of ₹ 70,000/- as earnest money. As per agreement, after the receipt of entire payment of sale consideration, as

fixed by the Central Government/Custodian, sale deed would be executed in favour of plaintiffs No.2 & 3 within a period of six months on payment of remaining sale consideration. The possession of the suit land has been given to the plaintiffs through plaintiff No.1 vide affidavit dated 5.5.2005 and the defendants are out of possession since then. As per Rapat Roznamcha No. 362 dated 12.3.2007, an entry was made in khasra girdawari for Rabi 2007 and defendants No. 4 to 6 have been shown as daughters of Nathi. If defendants No.4 to 6 are daughters of late Nathi, even then they have no rights to inherit the tenancy rights after his death and such Rapat Roznamcha No. 362 dated 12.3.2007 is illegal and not binding upon the plaintiffs and defendants No.1 to 3 are entitled to inherit tenancy rights.

Later on, plaintiffs came to know that defendant No.7 obtained a bogus agreement of sale from defendants No.4 to 6 in respect of the suit land and intended to interfere illegally in their existing possession over the suit land and prayer was made for restraining the defendants from interfering into peaceful possession of the plaintiffs.

The defendants contested the suit on the ground that plaintiffs are only in physical possession of the suit land to the extent of 1/2 share and remaining 1/2 share is under the possession of defendants No.4 to 6 and at present under defendant No.7 as per agreement of sale dated 4.1.2008 and as such suit is liable to be dismissed. Defendants also took the plea that after the death of Nathi Ram, mutation was sanctioned in favour of three sons and three daughters in

equal share. Since then defendants No.1 to 3 are in possession of the suit land as tenants to the extent of ½ share and the remaining ½ share is in possession of defendants No.4 to 6 thereof. Defendants No.1 to 3 did not execute any agreement of sale of their ½ share in favour of the plaintiffs. Therefore, they prayed that suit be dismissed.

On these facts, issues were framed and settled by the Court of first instance and the parties were asked to lead their respective evidence. The Court of first instance considered the material and evidence available on the file and returned the findings that plaintiffs failed to prove their case and the suit was dismissed. First appeal, filed before the Court of learned Additional District Judge, Palwal, was also dismissed and as such, present regular second appeal before this Court.

After hearing learned counsel for the parties and perusal of the record, this Court is of the view that following substantial question of law is involved in the present case:

"Whether the Court below misread and misappreciated the evidence, which resulted into perverse finding?"

While arguing on the substantial question of law, learned counsel for the appellants submitted that the Courts below failed to appreciate that respondents No.1 to 6 did not step into the witness box to deny the agreement. More so, in the written statement, filed by respondents No.1 to 7, they admitted that the appellants were in possession of ½ share of the suit land. However, respondents No.1 to 3 have denied their thumb impressions over the agreement of sale dated 5.5.2005. More so, as per Section 8 of the Act, only son, widow and

mother are entitled to inherit tenancy rights and respondents No.4 to 6 have no right to inherit the same and the suit is simplicitor for permanent injunction and the appellants have proved that they are in possession of the suit property.

Learned counsel for the respondents submitted that concurrent findings of facts have been recorded by both the Courts below and present regular second appeal is not maintainable and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and the fact that main suit before the Court below was for permanent injunction, this Court is of the considered view that the plaintiffs are in possession of the suit property and as such they are entitled to protect their possession. The appellants are in possession of the suit property on the basis of agreement of sale dated 5.5.2005, which was executed by respondents No.1 to 3 and in the pleadings, that fact was not denied. That way, admittedly appellants were in possession of the suit property to the extent of ½ share. This fact was duly admitted by DW.1 Jal Singh in his cross-examination that the plaintiffs are in possession of the suit land to the extent of ½ share. The Courts below have not considered this material and important fact, which resulted into erroneous finding and the same are liable to be set aside.

In view of above, substantial question of law is answered in favour of the plaintiff. Resultantly, the present appeal is accepted and the judgment & decree dated 26.8.2015, passed by learned Additional District Judge, Palwal, are set aside. Suit of the plaintiffs for permanent

injunction is decreed to the extent that they are in possession of ½ share of the suit land and the defendants are restrained from interfering into peaceful possession of the plaintiffs over the suit land, except in due course of law.

(Shekher Dhawan)
Judge

March 17, 2016

"DK"