

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

RSA-5616 of 2015 (O&M)

Date of decision: 18.03.2016

Ashok Kumar Mehngi

...Appellant

Versus

Mahant Ragubir Dass Ji and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S. Khaira, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The suit for possession filed by the plaintiff/appellant was dismissed by the trial Court, vide judgment and decree dated 12.02.2015.

2. Aggrieved against the findings of trial Court, the plaintiff/appellant filed an appeal which was also dismissed by the learned Appellate Court, vide judgment and decree dated 20.07.2015.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the

oral as well as documentary evidence on record, hence, the instant appeal has been filed by the plaintiff/appellant.

4. The brief facts of the case are that the plaintiff/appellant has filed the present appeal against the defendants being legal heir of Janak Raj. The plaintiff/appellant has challenged the impugned judgments on the ground that the suit property measuring 27 kanals was given on rent to his father on the terms and conditions as mentioned in para No.1 of the lower Court judgment. A registered rent note dated 26.08.1963 was also entered into between the Mahant Krishan Dass, allegedly owner of the suit land and Janak Raj (since deceased). Said Janak Raj died on 01.03.1992 and the plaintiff is in continuous possession of the said property as tenant since then. As per terms and conditions of the agreement, the plaintiff was and is ready and willing to purchase the property @ Rs.500/- per kanal. The plaintiff served various notices upon the defendants to execute the sale deed but the defendants did not turn up. Hence the present suit.

5. It is contended by learned counsel for the appellant that both the Courts below have gravely erred while passing the impugned judgments and have failed to appreciate the material

documents Ex.P7, the rent note cum agreement to sell dated 26.08.1963, vide which the suit property had been given to the father of the plaintiff on rent with certain terms and conditions. As per terms and conditions of the agreement, said Janak Raj was entitled to purchase the land at the rate of Rs.500/- per kanal. The rent note dated 26.08.1963 also bears the signatures of Janak Raj and Mahant Krishan Dass. The learned counsel further refers to Ex.P1, the jamabandi for the year 1990-91, whereby the appellant has been shown to be in cultivating possession and Mahant Krishan Dass to be shown as owner of the suit property. The mutation No.1716, vide which the defendant No.2 has been shown to be the owner of the land, is illegal one.

6. Heard, the learned counsel for the appellant.

7. The stand of the appellant is that initially, the property in dispute was under the ownership of Mahant Krishan Dass. Thereafter, the suit land was given on rent to Janak Raj (since deceased), by way of rent note Ex.P7 dated 26.08.1963. The appellant had claimed that the suit land was given on rent, vide Ex.P7, the rent note and as per terms and conditions of Ex.P7, the appellant will be entitled to purchase the suit land at

the rate of Rs.500/- per kanal. The appellant had claimed that Ex.P7 is a registered rent note cum agreement to sell which bears the signature of Mahant Krishan Dass. A bare perusal of Ex.P7 reveals that it was a rent note and not an agreement to sell which was executed by father of the appellant being tenant. PW-2, Rajinder Kumar, Registration Clerk, DC Office Gurdaspur had also stated that Ex.P7 is only a rent note. No evidence has come on record that deceased Janak Raj, also wanted to get the ownership right on the suit land during his lifetime on the basis of Ex.P7. The mere readiness and willingness of the appellant to purchase the suit land does not give any benefit to the appellant. No document has come on record to show that Krishan Dass had the right to rent out the suit land to any other person or that the land was his self acquired property. The case of the plaintiff/appellant rests only on Ex.P7, on the basis of which, he laid his claim. Even, no evidence has come on record to show that said Mahant Krishan Dass was the owner of the suit land, therefore, this Court is of the considered view that the appellant has miserably failed to prove his case. The documents reveals that the suit property is owned by Thakur Dwara, a religious institution. This fact has been admitted by the plaintiff in his

pleadings. Thakur Dwara-owner of the property has not been impleaded as a party in this suit. The conduct of the plaintiff is that he only filed the suit as legal representative of his deceased father Janak Raj. The other LR's of the deceased Janak Raj have not been arrayed as parties. Deceased Janak Raj died intestate. So, the suit of the plaintiff is bad for non joinder of necessary and proper parties. The plaintiff is also not entitled to specific performance as the alleged agreement Ex.P7 is dated 26.08.1963, and this suit has been filed on 29.04.2009, after 46 years after lapse of limitation period; that, too, when the Assistant Collector 1st Grade, Gurdaspur passed ejectment order dated 29.02.2008 against the LR's of the deceased Janak Raj-tenant. The suit has been filed only to prolong the eviction of the LR's of deceased Janak Raj, tenant from the suit land, which belongs to a Thakur Dwara-a religious institution. Therefore, in the given facts and circumstances of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties. Therefore,

this Court finds that the contentions have no merit as they only relate to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence.

8. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal.

Dismissed.

18.03.2016

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(JITENDRA CHAUHAN)
JUDGE