

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

**RSA No.5740 of 2015 (O&M)
Date of decision:09.02.2016**

Raj Kishan and others ... Appellants

Vs.

Hindu Undivided Family and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Rajesh Kumar Moudgil, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.14113-C-2015

The application is allowed, subject to all just exceptions.

Legal representatives of appellant No.3 - Amar Singh, as mentioned in the application, are ordered to be brought on record for the purpose of prosecuting the present appeal.

RSA No.5740 of 2015 (O&M)

The appellant-plaintiffs are aggrieved of the concurrent findings of facts and law recorded by the Courts below, whereby, suit claiming declaration and permanent injunction that appellant-plaintiffs have become owners by virtue of Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as '1953 Act') as the entry showing

the possession in the name of the respondent-defendants, who, are the sons of Dharmu, is un-explainable, has been dismissed.

Mr. Rajesh Kumar Moudgil, learned counsel appearing on behalf of the appellant-plaintiffs submits that trial Court found that parties admittedly are relatives and Dharmu was tenant and Jyoti Ram was sub-tenant. Dharmu was none else but the great grandfather of appellant-plaintiffs and therefore, they are entitled for declaration *vis-a-vis* ownership under 1953 Act. These facts have not been noticed by the Courts below. Even the possession has also been proved on record. At least, the trial Court ought to have granted the injunction.

I have heard learned counsel for the appellant-plaintiffs and appraised the impugned judgments and decrees of the Courts below.

I am of the view that there is no substance in the aforementioned submissions on the ground that for claiming declaration under 1953 act, plaintiffs are required to prove that they are in actual/continuous possession and had been paying the rent. The possession of sub-tenant would not entitle for declaration *vis-a-vis* ownership. As regards the injunction, there has already been an adjudication, vide judgment and decree dated 24.09.2004, wherein, it has been held that Dharmu was not held to be in cultivating possession of the suit land. Once Dharmu was not found in possession of the ancestral land, how the plaintiffs have come into

possession and the said onus has not been discharged.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 09, 2016
savita