

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

Date of decision: 19.04.2017

1. RSA No.1514 of 1991 (O&M)

Mahavir

... Appellant

Vs.

Surat Singh

... Respondent

2. RSA No.936 of 1991 (O&M)

Mahabir

... Appellant

Vs.

Surat Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

**Present: Mr. R.S. Sangwan, Advocate
for the appellant.**

**Mr. Mohit, Advocate for
Mr. R.A. Sheoran, Advocate
for the respondent.**

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical regular second appeals bearing RSA No.1514 of 1991 (Mahavir Vs. Surat Singh) and RSA No.936 of 1991 (Mahavir Vs. Surat Singh), are being decided together vide this common order, with the consent of learned counsel for the parties, as both these appeals are arising out

of similar set of facts, between the same parties and qua the same suit land. However, for the facility of reference, facts are being culled out from RSA No.1514 of 1991.

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby the learned Additional District Judge vide his impugned judgment and decree dated 16.02.1991 dismissed first appeal of the plaintiff-appellant and upheld the impugned judgment and decree dated 29.07.1989 of the learned trial Court, thereby dismissing the suit for possession by way of pre-emption. Similarly, in the second case bearing RSA No.936 of 1991, plaintiff has come in appeal before this Court against the impugned judgment of reversal dated 16.02.1991 passed by the learned first appellate Court, setting aside the judgment and decree dated 10.03.1989 of the learned trial Court and the suit for permanent injunction filed by the plaintiff-appellant was dismissed.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that plaintiff Mahabir had brought suit for possession by way of pre-emption of land comprised in khasra No.58/42 khatoni No.72, khasra No.13/21 measuring 8 kanals on the basis of right of tenancy under Virbhan son of Tulsi Ram who had sold his land 16 kanals to Surat Singh son of Nihal Singh defendant for a sum of Rs.11,000/-. He further averred that since he had been coming as a tenant gair marushi under the owner, so he had got superior right to pre-empt the sale, in question, he asked Surat Singh to accept his claim, but later declined to do so, hence this suit.

Upon service, defendant-respondent Surat Singh appeared and filed

his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff has superior right of pre-emption as against the defendant. OPP
2. Whether the sale price was fixed in good faith and was actually paid to the vendor? OPD
3. In case the issue No.2 is not proved, then what was the market value at the time of sale? OPP.
4. Whether the suit is not maintainable in view of the provision of Section 10 CPC? OPD
5. Whether the defendant is entitled to stamps and registration expenses? OPD
6. Whether the defendant is entitled to another sum of Rs.10,500/- as alleged? OPD
7. Whether the defendant is entitled to the compensation of Rs.20,000/- as alleged? OPD
8. Whether the plaintiff has no locus standi to file the suit? OPD
9. Whether the suit is not maintainable in the present form? OPD
10. Whether the suit is bad for partial pre-emption? OPD
11. Relief.

Similarly, in the another suit for permanent injunction, learned trial

Court framed the following issues: -

1. Whether the plaintiff is in possession over the suit land as tenant, as alleged? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is vague and incomplete? OPD
5. Whether the suit is bad for non-joinder of necessary parties? OPD
6. Whether the suit is barred under Order 2 and Sections 10 and 11 of CPC, as alleged? OPD
7. Whether the suit is collusive and benami if so, to what effect? OPD
8. Whether the suit is false and frivolous and the defendant is entitled to special costs? OPD
9. Relief.

In order to prove their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court vide its impugned judgment and decree dated 29.07.1989 dismissed the suit for possession by way of pre-emption, holding that the plaintiff failed to prove his superior right of pre-emption on the basis of tenancy, as he could not prove his status as tenant. However, his suit for permanent injunction was decreed by the learned trial Court vide its judgment and decree dated 10.03.1989. Plaintiff-appellant filed his first appeal against the impugned

judgment and decree dated 29.07.1989 passed by the learned trial Court, dismissing his suit for possession by way of pre-emption, whereas defendant Surat Singh in the suit for permanent injunction, filed his first appeal against the judgment and decree dated 10.03.1989 passed by the learned trial Court.

First appeal of the plaintiff Mahavir-appellant herein, in his suit for possession by way of pre-emption was dismissed by the learned first appellate Court vide its impugned judgment and decree dated 16.02.1991, whereas the first appeal filed by the defendant Surat Singh in the suit for permanent injunction against the judgment dated 10.03.1989 of the learned trial Court was allowed by the learned Additional District Judge vide his separate impugned judgment dated 16.02.1991. Hence these two identical regular second appeals at the hands of plaintiff. RSA No.936 of 1991 was admitted for regular hearing vide order dated 09.08.1991 passed by this court and thereafter, RSA No.1514 of 1991 was admitted for regular hearing vide order dated 05.09.1991 and it was ordered to be heard with RSA No.936 of 1991. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that the entire claim of the plaintiff-appellant in both these cases was based on his tenancy over the suit land. However, he failed to prove his tenancy. Categorical findings recorded by the learned Additional District Judge in para 9 of the judgment dated 16.02.1991, allowing first appeal of the defendant-Surat Singh, which has proved a clincher against the appellant in both these cases, deserve to be noticed here and the same read as under: -

“Keeping in view the oral and documentary evidence, it has

become crystal clear that the case founded by defendant Surat Singh in his written statement is established that it is Daya Ram son of Megha who has been coming in cultivating possession as Gair Marushi. In other words, tenant at will without payment of any lagan or batai whatsoever. Prior to him, Mahabir son of Siria used to cultivate it, but he had sublet the land in question in favour of Daya Ram son of Megha. So findings recording learned trial Court in favour of Mahavir that it was Mahabir who was in cultivating possession as Gair Marushi are wrong because he has sublet the land in favour of Daya Ram and subsequently it was Daya Ram who has been coming in cultivating possession of the suit land and his possession has been fully supported by the documents referred above, as well as by DW2 and DW2 who have come in the witness box to make deposition on oath while there is only sole testimony of Mahavir in support of his claim, which stands belied. So findings of learned trial Court on issues No.1 to 8 cannot be maintained, hence set aside.”

It has gone undisputed before this Court that one Virbhan son of Tulsi Ram was owner of the suit land, who sold it to defendant Surat Singh. It is also not in dispute that the plaintiff, for the reasons best known to him, did not even implead Virbhan son of Tulsi Ram, true owner of the suit land either in his suit for possession by way of pre-emption or in his suit for permanent injunction. He also did not examine true owner of the suit land as his witness. In this view of the matter, plaintiff-appellant was bound to fail in both the cases. It is so said because true owner of the land would have been the best witness to

depose as to whether the plaintiff was his tenant or not.

Plaintiff-appellant also could not prove his tenancy by producing any other relevant evidence on record. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while dismissing the suit for possession by way of pre-emption for want of cogent evidence. Similarly, learned first appellate Court rightly allowed the first appeal of defendant Surat Singh in the suit for permanent injunction, thus, both the impugned judgments and decrees passed by the learned first appellate Court deserve to be upheld.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Tikka Ram and another Vs. Kartara (deceased) through LRs and another, 2008 (12) SCC 634 (SC).***
2. ***Jagadeesh and another Vs. State of Karnataka and others, 2008 (12) SCC 624 (SC).***
3. ***Jagjit Singh Vs. Financial Commissioner, Haryana and others, 1981 PLJ 367 (P&H).***
4. ***Suraj Bhanand and others Vs. Mir Singh, 1987 R.R.R. 19 (P&H)***
5. ***Gurdershan Singh and others Vs. Hardy Singh and others, 1992 (1) R.R.R. 243 (P&H).***
6. ***Ram Lal and others Vs. Jagdish Singh and others, 2004 (3) RCR (Civil) 800 (P&H).***
7. ***Jaspreet Singh Vs. Manoj Kumar, 2009 (4) Law Herald 2579 (P&H).***
8. ***Jit Singh Vs. Umrao Singh and others, 2010 (4) PLR 550 (P&H).***

9. *Om Parkash Vs. Chaudhri Ram, 2013 (13) RCR (Civil) 297 (P&H).*

When confronted with the abovesaid factual as well as legal aspect of the matter, learned counsel for the appellant had no answer and rightly so, it being a matter of record. The learned Additional District Judge, before arriving at his judicious conclusion in the case of pre-emption, rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant findings recorded by the learned first appellate Court in paras 11 and 14 of its impugned judgment, which deserve to be noticed here, read as under: -

“In the case in hand, as per jamabandi entry for the year 1984-85, Mahabir son of Siria cultivated the land as gair Marushi without payment of any lagan. So a tenant at will cannot be considered as a tenant. Similarly, in Ex.P3, Mahabir son of Siria plaintiff has been recorded gair marushi, in other words, tenant at will. He cannot be considered as a tenant because he never paid any lagan or batai to Virbhan son of Tulsi Ram, the truthful owner of the land in question and at the time of sale. It is found on the basis of documents Ex.D1 to D8 that Daya Ram son of Magha has been coming as a gair marushi or tenant at will on the land in dispute. So a person, who cultivates a land as gair maurshi without payment of rent or batai wither to the truthful owner or to the person under whom he cultivates the land, does not come within the ambit of definition of 'tenancy' or 'tenant'. I and fortified of this view of mine by the judicial pronouncement Natha Singh and

others Vs. The Financial Commissioner, Taxation, Punjab and others 1976 P.L.J. 293 Head note (1), it was observed that cultivation by tenant recorded in revenue records. Khasra girdawaris do not show payment of any rent-absence of payment of rent or contract between land owner and tenant absolving tenant of liability to pay rent cannot be treated as tenant.

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Moreover, in the case in hand, Mahabir has purchased some land from Tulsi Ram and Ex.D9, copy of mutation supports this fact that vide sale deed No.791 dated 25.12.1972 in same khewat, Mahabir son of Siria has purchased three pieces of land comprised in killa No.15, 4/1 measuring 4 kanals 18 marlas, killa No.12/24 measuring 8 kanals, killa No.17/2 measuring 3kanals 2 marlas, total 16 kanals. The affect of this purchase is that be no longer remains Gair Marushi. His right of gair marushi merged into this purchase, in question, and has given him title of a landowner. In Smt. Bhajan Kaur and others Vs. Kanwar Devinder Singh and another 1990 P.L.J. 242 Head note (b), it was observed Transfer of Property Act, Section 11 (d)-Merger of rights-lease hold rights mere with ownership rights (in absence of covenant to the contrary) when lessee purchases ownership right from lessor- smaller leasehold rights will merge with bigger ownership rights – A person cannot at the same time be both landlord and tenant- on rights stands extinguished -Doctrine of merger.”

During the course of hearing, learned counsel for the appellant

could not point out any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these appeals having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both these regular second appeals stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

19.04.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No