

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

Date of decision: 19.04.2017

1. RSA No.430 of 1991 (O&M)

Singh Ram

... Appellant

Vs.

Surat Singh

... Respondent

2. RSA No.1856 of 1990 (O&M)

Singh Ram

... 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.430 of 1991 (Singh Ram Vs. Surat Singh) and RSA No.1856 of 1990 (Singh Ram 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 qua the same suit land. However, for the facility of reference, facts are being culled out from RSA No.430 of 1991 (Singh Ram Vs. Surat Singh).

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 20.11.1990 dismissed first appeal of the plaintiff-appellant and upheld the impugned judgment and decree dated 25.08.1989 of the learned trial Court, thereby dismissing the suit for possession by way of pre-emption. Similarly, in the second case bearing RSA No.1856 of 1990, plaintiff has come in appeal before this Court against the impugned judgments and decrees passed by both the learned Courts below holding his possession but did not accept his tenancy. Judgment and decree dated 01.09.1988 of the learned trial Court partly decreeing the suit for permanent injunction filed by the plaintiff-appellant was upheld vide judgment and decree dated 01.06.1990 passed by the learned first appellate Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that defendant purchased the land measuring 16 kanals from Virbhan for Rs.11,000/-.Plaintiff being tenant on an area of 3 kanals 2 marlas bearing khasra No.13/201 brought the present suit to pre-empt the said sale qua that suit land on payment of proportionate price of Rs.2,132/-.

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.10,000/- 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 vague and incomplete? OPD

4. Whether the suit is bad for non-joinder of necessary parties?
OPD
5. Whether the suit is not maintainable in the present form?
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 25.08.1989, 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 01.09.1988.

Plaintiff-appellant filed his first appeal against the impugned judgment and decree dated 25.08.1989 passed by the learned trial Court, dismissing his suit for possession by way of pre-emption. Plaintiff Singh Ram also filed his first appeal against the judgment and decree dated 01.09.1988 passed by the learned trial Court, whereby his suit for possession was partly

decreed qua possession only and declining qua his tenancy on the suit land. First appeal of the plaintiff Singh Ram-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 20.11.1990. Similarly, his first appeal in his suit for permanent injunction against the judgment dated 01.09.1988 of the learned trial Court was dismissed by the learned Additional District Judge vide his separate judgment dated 01.06.1990. Hence these two identical regular second appeals at the hands of plaintiff. RSA No.1856 of 1990 was admitted for regular hearing vide order dated 18.01.1991 passed by this court and thereafter, RSA No.430 of 1991 was admitted for regular hearing vide order dated 29.05.1991 and it was ordered to heard along with RSA No.1856 of 1990. 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 13 of the judgment dated 01.06.1990, dismissing first appeal of the plaintiff-appellant, which has proved to be clincher against the appellant in both these cases, deserve to be noticed here and the same read as under: -

“In view of the above oral and documentary evidence on the file, it is evident that except one or two stray entry, there is no entry regarding payment of rate of batai or lagan. This shows that Singh Ram plaintiff-appellant has been coming in cultivating possession of the suit land as Gair Marushi and has been simply paying to the

Govt. land revenue and never paid any batai, lagan, chakota to its truthful owner, thus, learned trial Court correctly took a view that Singh Ram is in cultivating possession of suit land, but not as a tenant and accordingly relief upon 1976 P.L.J. 293 Natha Singh and others Vs. The Financial Commissioner Taxation, Punjab and others, 1980 P.L.J 115 Mohan Lal Vs. Jagjit Singh 1980 P.L.J. 295 Ramkaran Vs. The Financial Commissioner and others, so the findings recorded by learned trial Court is based on reasons, no interference is called for, hence it is maintained.”

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, as party-defendant 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 dismissed the first appeal of plaintiff-appellant in his 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. Hardyal 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 para 5 of its impugned judgment, which deserve to be noticed here, read as under: -

“Now in appeal the finding of the trial Court on issue No.1 has been challenged. The findings of the trial Court on other issues have not been challenged. In the present case on the file of the trial Court Ex.D1, a judgment passed by Shri R.K. Bishnoi on 01.09.1988 has been placed. The perusal of this shows that the suit for grant of injunction claiming possession on the land in suit as tenant was brought by plaintiff against defendant. One of the issues in the suit was as under:

“Whether plaintiff is in possession over the suit land as tenant as alleged?”

The said issue was found in favour of plaintiff to the effect that he is in possession of the suit land but finding was recorded that he is not tenant of the land in suit. Against the said finding an appeal was preferred which is admitted at the bar to have been dismissed. Said judgment will have the force of res judicata and will show that plaintiff is not in possession of the land in suit as tenant. To prove tenancy counsel for the plaintiff-appellant placed reliance on revenue documents. Ex.P2 is a copy of jamabandi wherein possession of plaintiff is recorded as tenant-at-will in the year 1984-85 column of rent is blank. Ex.P3 is copy of girdawari for 1985-86. In the same also lagan to be paid is not specified. Counsel for plaintiff contended that when in revenue record possession recorded is of plaintiff as gair marushi so he could be

held to be tenant. To this contention I do not agree. Entry in column of cultivation in jamabandi is to be read with entry in column No.10 pertaining to the lagan. As column of lagan is blank so it will be held that status of plaintiff as tenant is not proved. So even revenue record does not prove the case of plaintiff. So finding of the trial Court on issue No.1 is confirmed.”

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