

Sr. NO. 267

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

**RSA No. 140 of 2009(O&M)
Date of decision:19.07.2017**

Saroj and others

.....Appellants

versus

Satyender and another

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. N.S.Shekhawat, Advocate
for the appellants.

Mr. S.D.Sharma, Sr. Advocate with
Mr. Ved Priya Malik, Advocate
for the respondents.

Rajbir Sehrawat, J.

Present appeal has been filed by the plaintiffs whose suit for declaration and possession was dismissed by the trial court and also the appeal was dismissed by the learned lower appellate court. The appellant had filed a suit claiming that they are the owners of suit property comprising khasra and killa numbers 6//24(8-0), 25(8-0), and 7//11(4-11), 12(15-16), 13(6-11), 20/2(4-8), 21/1(4-12), and 20//1/1(4-12) and 21//4/1(6-0), 5(8-0), 3/2 min north (2-4) and 6//16(8-16), 17(9-9), kites 13, total measuring 80 kanals 19 marlas situated within the revenue estate of village Gagarwas. It was claimed that respondent No. 2 was the tenant on the land in question and he sub-let the land to his son without the consent of the plaintiffs/landlords, therefore, they are liable to be ejected and the possession deserves to be handed over to the plaintiffs. It was further prayed that the entry of mortgage in favour of the respondents entered into

the revenue record is without any basis and therefore the same may be set aside.

The facts as pleaded in the plaint and as contended during the arguments are that originally one Indraj was the owner of the suit land. Ganpat Rai was the tenant over the suit land. After the death of Indraj his wife Ramkaur inherited the suit property. After Ramkaur inherited the property Ganpat had surrendered possession of the suit land to Ramkaur in the year 1976. Thereafter, Ramkaur self cultivated the land in question upto the year 1978. After the death of Ganpat in the year 1978 Ramkaur inducted Ishwar, i.e. respondent No.2, who was one of the sons of Ganpat Rai as tenant on the land in question. Thereafter, Ramkaur suffered a decree dated 23.03.1994 in favour of Satpal, Joginder and Saroj resulting into the transfer of land in favour of these persons vide mutation dated 18.05.994, Ex:P-12. Therefore, they became the owner and Ishwar became tenant under them. Since, as per the plaintiffs Ishwar had sub-letted the land in question in favour of his son, therefore, the tenancy stood terminated and they claimed the possession of the suit land.

The defendants filed written statements. Respondent No. 1 Satyender has taken a stand that he has no concern with the land in question. Defendanteant No.1 Satyender pleaded that his date of birth was 22.07.1976 and therefore, he was just 12 year old in the year 1978 when the sub tenancy is alleged to have been created in his favour. He took a stand that he never cultivated this land nor he is a sub tenant over this land. He further stated that it is only his father Ishwar along with his other brothers is cultivating the suit land and any entry made in the revenue record showing him to be a tenant or sub tenant is got wrongly entered by the plaintiffs in collusion

with the revenue officials.

Respondent No. 2, statedly, filed separate written statement, signatures on which he later on denied. However, in this retracted written statement respondent No. 2 had taken a stand that Indraj was the original owner and his father Ganpat was tenant over the land. Indraj died in the year 1976 and he was succeeded by Ram Kaur. He alongwith his two other brothers namely Sombir and Om parkash inherited the tenancy after death of their father in 1978. Therefore, all the three brothers became tenants under Ramkaur and they continue to be in possession of the suit land. He pleaded that before consolidation their father was the tenant over the land and this land was comprised for Khasra no. 33 min measuring 40 bighas. During the consolidation new numbers have come into existence in lieu of the above said khasra no. 33 and the new numbers which have been carved out in consolidation and over which they are tenant are as under:-

*“6//14(3-6), 15(3-7), 16(8-16), 17(9-9), 18(9-11), 23
(8-0), 24(8-0), 25(8-0);
7//11(4-11), 12(5-16), 20/2(4-8), 21/1(4-12),
20//1/1(4-12);
21//3/1(2-4),4/1(6-0),5(8-0)
total measuring 98 kanals 12 marlas as is reflected in
the Jamabandi for the year 1963.”*

It was further pleaded that the predecessor-in-interest of the plaintiffs, in collusion with revenue officials had got their own names entered in khasra girdwari by removing the name of Ganpat Rai from the land except the killa nos. 7//20/2, 21/1, 13, 20/1/1, 21//3/1, 4/1, & 5 vide Rapat Roznamcha no. 70. It was further pleaded that vide Rapat Roznamcha No. 221 Ganpat Rai has been wrongly entered as a mortgage over some of the killa numbers out of the suit land. By pleading that certain other wrong

revenue records were also prepared without issuing any notice it was also pleaded that Ganpat Rai never surrendered his possession over the disputed land and that the entries regarding mortgage in favour of the answering defendant are totally wrong. So, the entries regarding mortgage were denied even by the answering defendant.

It is worth mention that in his written statement respondent No. 2 had also set up a counter claim saying that it is clear from the revenue record that tenancy of Ganpat Rai continued till his death which had taken place in the year 1978 and his three sons namely, Ishwar, Sombir and Om Parkash inherited the tenancy with possession of the disputed land, along with two other killa numbers i.e. 6//18 and 23 on fix rent. However, it was not pleaded that these two killa numbers i.e. 6//18 and 23 were under the ownership of plaintiffs or predecessors-in-interest. It was further claimed that Jamabandi prepared after 1963 in which the name of Ganpat Rai as tenant has been omitted is liable to be corrected and the name of Ganpat Rai should be entered as tenant and after his death the name of his three sons should be entered as tenant. As such, in counter claim the answering respondent claim that jamabandi prepared after 1963 be declared as void to the extent of column of cultivation and the correct position should be entered by entering the cultivation by Ganpat Rai and after his death, the cultivation of his three sons including the respondent No. 2. This claim was made by respondent No. 2 over the suit land and also regarding 2 independent khasra numbers i.e. 6//18(9-11) and 23(8-0) marla.

Learned lower trial court dismissed the suit by observing that sub-letting was not proved because the entry in the name of Satyendra as tenant was entered without any basis and the revenue official i.e. PW-5 has

stated that whenever the entries were changed in this case no notice was served upon the effected persons. It was further held that the plaintiffs have failed to prove the sub-letting by respondent No. 2. The suit filed by the plaintiffs was dismissed and the counter claim filed by respondent No. 2 was decreed. However, a perusal of the judgment passed by the learned trial court shows that no reasoning is discernible from the judgment decreeing the counter claim of the respondents. It appears that counter claim has been decreed just as a consequence of dismissal of the suit of the plaintiffs, although, the plaintiffs have never claimed the ownership over 2 khasra numbers mentioned in the counter claim nor had the respondents claimed these 2 khasra numbers to be under the ownership of the plaintiffs.

Learned lower appellate court also dismissed the appeal filed by the plaintiffs saying that as per the case of both the parties, their respective advocates had given a statement reduced in writing before the trial court; that revenue record prepared upto the year 1976 does not inspire confidence and therefore, it can not be safely relied upon by the courts. In view of this, the court observed that the onus on the appellant was very heavy to prove that tenancy of Ganpat Rai came to end in the year 1976 by surrender of possession by him. However, the plaintiffs/appellants failed to prove the surrender of tenancy and possession by Ganpat Rai. The Court further observed that the plea of the plaintiffs that Ganpat Rai surrendered the possession and tenancy over the suit land because he was a big landlord and large chunk of his own land was being declared as surplus; cannot be believed because the Land Ceiling Act came in the year 1971, therefore, there was no reason or occasion for Ganpat Rai to surrender the possession in the year 1976. Learned lower appellate court further states that after the

death of Ganpat Rai tenancy was inherited by his three sons namely Sombir, Ishwar and Om parkash, therefore, all of them should have been impleaded as party in the suit proceedings because the out come of the suit would affect them also. Since they have not been impleaded as a party therefore, the suit is bad for not impleading the necessary parties. It was further observed by the learned lower appellate court that the fact that three brothers are tenants over the suit property is also supported by the admission of the appellants/plaintiffs who had filed an ejectment petition against all the three brothers calling them as tenant over the suit property. The Court further observed that merely self serving statement of Ram Kaur that she had seen Satyender, respondent No. 1 cultivating the land does not conclude that the suit property has been sub let to him considering that the Satyender, respondent No. 1 is son of Ishwar and can always help his father in cultivation of land. Therefore, this fact by no means prove the sub-letting. It was further observed by learned lower appellate court that even as per the revenue record Satyender, respondent NO. 1 has been shown as tenant under Ramkaur and not as a sub tenant under Ishwar.

Regarding the counter claim, it was held by the learned lower appellate court that as a natural consequence of dismissing the suit the counter claim of the respondents qua killa No. 6//18 and 23 was rightly decreed besides the suit land and therefore, this land is also to be included in the tenancy of the respondents along with the suit property. However, a perusal of the judgment of the learned lower appellate court also does not give any reason for decreeing the counter claim qua 2 additional khasra numbers which were not claimed even by the plaintiffs in the plaint to be their property.

Starting his argument, learned counsel for the appellant submits that they had filed a suit claiming possession, inter-alia, of killa no. 7//3 and 21//3/2. It is contended by learned counsel for the appellant that even in the retracted statement of respondent No. 2 or in the written statement of respondent No. 1 there is no contest qua these killa numbers. Respondents have mentioned specific killa numbers in their written statement over which they claim to be in possession and these two killa numbers are not mentioned by them as under their tenancy. Therefore, as per learned counsel for the appellants, the suit filed by him should have been decreed at least qua these killa numbers.

Continuing the argument he submitted that Satyender has been duly entered as the tenant in possession over the suit land and Ramkaur has duly proved the possession of Satyender wherein she has deposed that it was Satyender who was cultivating the land and she herself had seen Satyender cultivating the suit land. Therefore, since the respondents have sub-let the land in question without the consent of the plaintiffs, the tenants have made themselves liable to be ejected. As per his contention the revenue record amply proves that there has been a sub-letting of the property, therefore, the suit of the plaintiffs/appellants should have been decreed. The next limb of the argument of the learned counsel for the appellant is that respondent No. 2 has denied the tenancy itself and therefore, decree should have been passed ordering the ejectment of the tenants. To support his argument he submits that respondent No. 2 filed a written statement specifically saying therein that they had never taken the property from the plaintiffs as tenants and that there was no tenancy. It is further submitted that although respondent No. 2, while appearing as DW-1

before the Court has denied his signatures on the written statement, however, he can not be permitted to run away from the admission made by him in the written statement. For the purpose of support to his argument he relies upon Section 58 of the Evidence Act to say that the facts admitted by the opposite side need not be proved by the plaintiffs. He further places reliance upon the judgment of this Court reported as *1970 R.C.R(Rent)127 Sada Ram vs. Gajjan son of Shiama* and contends that denial of title of landlord by the tenant in written statement would entail forfeiture of tenancy and therefore, the landlord would be entitled to eject the tenant in the same suit. He further relies upon the judgment of Hon'ble Supreme Court reported as *2008(1)RCR(Rent)487 Gautam Sarup vs. Leela Jetly and others* to contend that the defendant can not be allowed to resile from the admission on the plea that admissions were obtained by playing fraud. Therefore, the admission made by respondent No. 2 in the written statement would bind him and would make him liable to be ejected on the ground of denial of the tenancy. He further submits that ejectment petition Ex: D-1 attributed to the respondents as having been filed by them has not been proved before the court as per requirement of the Evidence Act. Hence, the document can not be read in evidence.

Learned counsel for the appellants has further argued that the counter claim of the respondents have been wrongly decreed against them qua killa no. 6//18 and 23. It is argued by the counsel that the appellant, in their plaint or pleadings or deposition, has never claimed these killa numbers to be under their ownership. He states that even till today they are not the owners of these killa numbers, therefore, nobody can claim to be a tenant under them. Hence he says that judgments and decree passed by the

learned courts below decreeing the counter claim filed by respondent No. 2 is baseless. It is further stated by counsel that even the respondents have not pleaded or proved anywhere that these two killa numbers are under the ownership of the plaintiffs/appellants. Continuing his argument against the counter claim of the respondents he has further argued that Order 8 Rule 6A of the CPC provides for a counter claim by a respondent. However a bare perusal of this provision shows that the counter claim to be filed by the respondent has necessarily to be limited to being a 'counter' to the “*claim of the plaintiffs*”. He says that no independent claim, which is not connected with the suit property or any rights arising therefrom can be raised as a counter claim. Since the plaintiffs had not claim the possession of these killa numbers in their plaint nor had they claimed to be the owner of these killa numbers, therefore, the counter claim qua these killa numbers filed by respondent No. 2 is patently beyond the scope of Order 8 Rule 6A of CPC and hence, the same is not maintainable. Further, the argument of learned counsel for the appellant is that neither the trial court nor the lower appellate court had given any reasoning or justification as to how they have decreed the claim of the respondents against the plaintiffs qua these two killa numbers.

On the other hand, learned counsel appearing for the respondents has submitted that the plea of sub-letting has not been proved against the respondents by any cogent evidence. It is submitted by him that Satyender, defendant no. 1 has filed written statement and in para no. 11 of the same itself he has said that he has no concern with the suit land. In the statement he has further pleaded that defendant No. 2, his father, is cultivating the land and any entries in his favour are manipulated by the

plaintiffs in connivance with the revenue officials. He has further referred to the statement made by this witness while appearing as DW-2 wherein he has deposed that his date of birth was only 20.07.1976, he was only a student and not involved in any agriculture work and that the land was being cultivated only by his uncles and his father. Therefore, it is submitted by learned counsel that sub-letting is denied by the person to whom the sub-letting is alleged to have been given. It is further argued by learned counsel that Jamabandi for the year 1975-76 Ex:P6 is the only stray entry wherein only Ishwar has been shown as a tenant. It is submitted by him that this entry was made without any reference to any mutation in favour of Ishwar, i.e., respondent No. 2, without any order of the revenue authorities or without mentioning any transaction in the remarks column of jamabandi for showing as to how the entry of name of Ishwar as the sole tenant on the land in question has come. Therefore, he submits that there is no basis for this entry in the name of Ishwar. Infact, not only Ishwar but all his three brothers are the tenants over the suit land by inheritance. Still further it is argued that Ex:P-8 jamabandi for the year 1980-81 is the only stray entry showing the Satyender to be as a tenant over the suit land. He submits that this entry, by no means, proves the Satyender to be a sub-tenant. Explaining his argument he has submitted that firstly, in this entry Satyender has not been shown as sub-tenant under his father Ishwar, rather, he has been shown as a tenant directly under Ramkaur. He says that this entry is totally wrong. Even this entry in the name of Satyender has been entered in collusion with the revenue officials, otherwise, there is no basis mentioned in the revenue record for making this entry in the name of Satyender. There is no reference available in the jamabandi or other record showing as to how this entry;

showing to be Satyender as tenant has been entered in jamabandi. Hence, this entry is stray entry and is totally wrong. To buttress his argument, he further submits that the next jamabandi Ex:P-11 for the year 1990-91 Ramkaur has again been shown as self-cultivation of the land in question and the name of Satyender as a tenant is not there. Therefore it is the submission of the counsel that the plea of sub-letting is not proved in the case, rather the same is disproved from the revenue records itself.

Regarding the argument of the learned counsel for the appellants qua denial of tenancy by the respondents on the basis of their written statement he has submitted that DW-1 Ishwar while appearing as a witness before the court has specifically deposed before the court that the signatures on the written statement are not his signatures. Therefore, according to learned counsel, Ishwar, respondent No. 2, has denied filing of written statement in the case since he denies any signatures on this written statement. He further submits in his support that not even a suggestion was made by the plaintiffs/appellants to this witness while appearing as DW-1 regarding his signatures on the written statement or denial by him. Therefore, according to learned counsel the denial of written statement has not been disputed by the appellants. Therefore, there is no proof on the record to show that the respondents tenants ever denied the relationship of tenant or the title of the appellants; which could have been basis for their ejectment. It is his submission that rather the case of the respondents is that they are the tenant over the suit land having inherited the tenancy from their father.

Regarding counter claim qua 2 independent killa numbers 6//18 and 23 it is the submission of the counsel for the appellants that the counter

claim has rightly been decreed.

I have heard learned counsel for the parties and gone through the record with the able assistance of learned counsel for the parties.

From the pleadings, documents and the evidence on record it is clear that both the parties have agreed and made statement before the Court that the record upto the year 1976 is not prepared correctly and being discrepant the same can not be safely relied upon by the courts. Therefore, not much significance can be attached to any entries prior to year 1976. The second argument between the parties in pleadings and during the arguments is that this land has never been under mortgage with the respondents and the entry in the revenue record, if any, showing the respondents to be the mortgagee are baseless and hence liable to be set aside. Therefore, the entries in the revenue record, if any, existing which shows the respondents to be the mortgagee of the suit land are declared as illegal.

So far as the plea of sub-letting is concerned there appears to be merit in the arguments raised by counsel for the respondents that the plaintiffs has not been able to prove any sub-letting by Ishwar in favour of his son Satyender. Accordingly, there is no illegality in the finding recorded by the courts below that the plaintiff has failed to prove the ground of sub-letting for ejectment of the respondents from the suit land. The appellants had relied upon the statement of RamKaur made before the Court as PW to the effect that land in question was sub-let by Ishwar in favour of his son and that she has herself seen his son Satyender cultivating the land in question. However, this self serving statement without any documentary basis can not be relied upon to uphold the ground of sub-letting. On the contrary, it is proved on record that neither Ishwar was inducted by

Ramkaur as sole tenant over the suit land nor Satyender was ever recorded as a sub-tenant of Ishwar. The jamabandi for the year 1975-76, Ex:P-6 relied upon by the appellants to show the exclusive tenancy of Ishwar under Ramkaur is only a stray entry which does not find repetition. Even this entry is not supported by any remarks in the jamabandi as to by what transaction Ishwar was inducted as a tenant under Ramkaur. No mutation or order of any court or revenue authorities has been referred to support this entry nor any such transaction or documentary is mentioned in this jamabandi in support of this entry. This fact is further clarified by the fact the next jamabandi, Ex:P-11 for the year 1990-91 shows Ramkaur as khudcast(self cultivation) and Ishwar is not entered as tenant in this entry, although there is no pleading by the appellant that he was ever ejected from the suit land by Ramkaur by terminating his tenancy. The other jamabandi for the year 1980-81, Ex:P-8 relied upon by the appellants to claim sub-tenancy in favour of Satyender is also a stray entry without any basis being discernible from the revenue record for making this entry. Otherwise also this entry is not repeated again and even in this jamabandi Satyender has been shown as a direct tenant under Ramkaur and not as a sub-tenant under his father Ishwar. Mere fact that some person might have, some time, seen Satyender working in the fields of the suit land does not prove him to be a sub-tenant. He was just a child of 12 years at the time when the alleged sub-tenancy is stated to have come into effect. He was a minor and no transaction of transfer of tenancy in his favour has been proved on record. Therefore, he might have been seen working on the field, because admittedly, his father and his uncles were the tenant over the suit land and they were in cultivating possession of the same. Therefore, this fact by no means prove the sub-

tenancy in his favour.

The ground of denial of the title of landlord though not claimed in the plaint is also not made out from the pleadings and the evidence on record. Therefore, the respondents can not be ejected from the suit land on the ground of denial of tenancy and title of the landlord. A perusal of the record shows that even in the written statement, which was later on disowned by respondent No. 2, it has been a specific case of the respondents that they were the tenant over the suit land though through inheritance of their father. Even in the deposition before the court respondent No. 2 has admitted the tenancy of him and his two brothers over the suit land by inheritance from their father. So there is no denial of the tenancy as such. Strong reliance has been placed by the learned counsel for the appellant that respondent No. 2 in his written statement has specifically said that he had not taken the suit land on tenancy from plaintiffs. However, a harmonious reading of this retracted written statement also makes it clear that the respondents admitted to be tenant over the suit land under the predecessors-in-interest of the plaintiffs and therefore, the plaintiffs also, by inheritance. The denial of tenancy in the written statement qua the plaintiffs seems to be only denying a specific transaction separately with the plaintiffs creating any tenancy. Otherwise, also respondent No. 2 who has filed this written statement has disown the written statement by denying his signatures on the same. Hence, this written statement can not be read as against him because neither the plaintiffs have proved the signature of respondent No. 2 on this written statement nor have they put any suggestion to him while appearing in the witness box that these are his signatures and that he filed the written statement. The judgments cited by learned counsel for the appellant in *Sada*

Ram's case(supra) and in the case of *Gautam Sarup(supra)* also does not come to the rescue of the appellants for two reasons. Firstly, even if the written statement of respondent No. 2 is taken into consideration then also it is clear that they admitted the tenancy by inheritance over the suit land, though denying any separate transaction for inducting them as a tenant by the plaintiffs. Secondly, the judgment of the Hon'ble Supreme Court also says that defendant filing a written statement, though can not be permitted to withdraw the admission, however, he can very well explain the contents of the written statement. If he denies the signatures itself on the same then written statement can not be treated as a admission against him. In the present case, since respondent No. 2 has denied his signatures on the written statement and has explained the situations under which contents in the written statement might have come without his authorization, so, it is clear that he is not accepting the factum of denial of tenancy by him.

The plaintiff has to prove his own case by leading positive evidence and he can not rely upon the weakness of the evidence of the defendant for his case to succeed. In the present case, there is no evidence lead by the plaintiffs to show that the defendants/respondents ever denied the tenancy over the suit land. Rather, the plaintiffs/appellants has admitted that the respondents are claiming to be the tenant over the suit land, though the plaintiff has alleged further sub-letting to one of the respondents, to seek ejectment. Hence, there is no proof of denial of title of the plaintiffs by the respondents. Faced with this situation, learned counsel for the appellants submitted that the fact which has been admitted by the defendant need not be proved by the plaintiffs as per Section 58 of the Evidence Act. Section 58 of the Evidence Act is reproduced below:-

“58.Facts admitted need not be proved---- No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

However, this argument of learned counsel for the appellants is totally misplaced. A bare perusal of Section 58 of the Evidence Act shows that the admission contemplated by the Section are only though admissions (i) to which parties to the proceeding have *agreed to admit* at the hearing or before hearing, (ii) the parties *agreed to admit* by writing under their hand, (iii) where by any rule of pleading in force at the time the pleading is deemed to be admission by some deeming fiction created by some statutory law. In the present case, there is no agreement between the parties to admit the factum of denial of tenancy at the time of hearing or before hearing. Neither there is any written agreement between the parties under their hand by which the denial of tenancy might have been admitted by defendants/respondents. Learned counsel for the appellants have also failed to point out any statutory law creating a deeming fiction that a fact mentioned in the written statement shall be deemed to be an admission on the part of person filing the written statement. The written statement is just a pleading by the parties and no provision of law attaches a deeming fiction of admission regarding a fact mentioned in the written statement. This is particularly so when the same has been disowned by the party on behalf of which the written statement is stated to have been filed. Therefore, Section

58 of the Evidence Act does not presume the content of the written statement of respondent no. 2 to be a deemed admission, in absence of any other law creating such a deeming fiction, as contemplated by Section 58 of the Evidence Act. Hence, this ground is also not available to the plaintiffs/appellants for seeking ejectment of the defendants/respondents.

However, as is seen from the record plaintiffs/appellants had claimed the title and therefore, the possession of the land comprised in khasra no. 7//13 and 21//3/2. From the record it is apparent that respondents have not raised any claim qua these khasra numbers. They claimed their tenancy over specified khasra numbers as detailed in the written statement. However, those killa numbers do not find mention in the killa numbers mentioned by the respondents under their tenancy. In their deposition before the court also they have not specifically stated that these 2 killa numbers were also under their tenancy. Therefore, the claim of the plaintiffs/appellants qua these 2 killa numbers have gone uncontested. Therefore, the suit of the plaintiffs/appellants deserve to be decreed qua these 2 killa numbers. Hence ordered accordingly.

So far as counter claim filed by the respondents qua killa numbers 6//18 and 23 is concerned, it is apparent from the judgments passed by the learned courts below that they have not given any reasoning as to how they are decreeing the counter claim qua these 2 killa numbers. The courts below seems to have decreed this counter claim only as a consequence of dismissal of the suit of the plaintiffs/appellants. Otherwise, also the plaintiffs/appellants had never claimed in their plaint these 2 killa numbers to be under their ownership. Nor the respondents have pleaded or proved that these two killa numbers were under the ownership of the

plaintiffs. Therefore, there is no question of the respondent being tenant on these 2 killa numbers under the ownership of plaintiffs/appellants.

Learned counsel for the appellants has rightly relied upon Order 8 Rule 6A of CPC to content that any 'counter claim' by a respondent has to be limited to raising a counter claim to the "claim of the plaintiff" and an independent claim having no concern with the plaintiff can not be raised as a counter claim, although, the respondent might be having a right to file a separate civil suit for raising that claim against a relevant person. Provision of Order 8 Rule 6A CPC is reproduced herein as under:-

“Counter-claim by defendant:--(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”

A bare perusal of the provision of Order 8 Rule 6A CPC shows that the defendant can set up by way of counter claim any right or claim in respect of 'cause of action' against the plaintiff and “against the claim of the plaintiff”. Therefore, under this provision a counter claim by the defendant has to be restricted to the subject matter of the suit property or any right title or interest relating or in relation thereto and this counter claim can be raised only qua the cause of action against the plaintiff. Hence a counter claim with respect to an independent property, with which the plaintiff has no concern is not maintainable. In the present case neither the respondents have claimed that these 2 killa numbers belong to the plaintiff nor the plaintiff themselves have claimed these 2 killa numbers to be their property. Resultantly, the defendants had no cause of action against the plaintiffs/appellants qua these 2 killa numbers which are the independent properties not connected with the suit property. Otherwise also the counter-claim was raised in the written statement of respondent No. 2. However, he has disowned the entire written statement and its pleadings by denying his signatures on the written statement and counter claim. Since the respondent disowned his signatures on the written statement/counter-claim, therefore, it has to be treated as if he has not filed any counter-claim. The respondent No. 2 can not be permitted to approbate and reprobate the same fact at the same time. Hence, if with his denial of signatures written statement is treated as disowned then even his counter-claim also has to be treated as disowned.

Moreover neither the respondents have lead any evidence to substantiate their claim qua these 2 killa numbers nor the learned courts below have given any justification for decreeing this claim of the

respondents. *Resultantly, the findings on these points recorded by the courts below have to be reversed and the decree passed in the counter claim of the respondents have to be set aside. Ordered accordingly.*

As a result of above, *the suit of the plaintiffs/appellants is partially decreed* qua these 2 killa numbers i.e. 7//13 and 21//3/2 and they are held entitled to the possession of the land of these killa numbers as mentioned in the plaint. Further, the decree passed in favour of the respondents in their counter claim qua 2 killa numbers i.e. 6//18 and 23 is set aside and their counter claim is rejected. The appeal is *disposed of* in the above terms. Let the decree sheet be prepared accordingly.

19th July, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*