

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

**R.S.A.No.2754 of 2009 (O&M)
Date of Order: 13.09.2017**

Sulhar

..Appellant

Versus

Ram Kali and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shiv Kumar, Advocate,
for the appellant.

Mr. Suman Jain, Advocate,
for respondent nos.4 to 7.

ANIL KSHETARPAL, J. (Oral)

Defendant No.1 is in regular second appeal against the judgment passed by the learned Additional District Judge, Faridabad.

Plaintiffs had filed a suit for declaration, permanent injunction, and in the alternative decree for possession. It was the claim of the plaintiffs that they are “Bhondedars” in possession of the suit land and the entries reflected in the revenue record showing that defendant no.1 to be mortgagee are liable to be set aside.

Defendant no.1, on the other hand, set up a plea that he is a tenant. Defendant no.1 further asserted that “Bhondedars” have never remained in possession of the property.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit filed by the plaintiffs.

Learned first appellate Court held that entry of mortgagee in favour of the defendant no.1 is incorrect. However, the Court found that

defendant no.1-appellant is in possession of the suit property as tenant under the plaintiffs. Learned first appellate Court relied upon the revenue record, which clearly records that defendant no.1 is tenant under the “Bhondedars”.

“Bhondedari rights” are normally given to a individual or to his family in lieu of their services. After recording the finding that defendant no.1 is tenant under the plaintiffs, the Court in the concluding para, decreed the suit filed by the plaintiffs and declared plaintiffs and defendants no.2 to 6 who were proforma defendants as “Bhondedars” in cultivating possession. This finding of the learned first appellate Court is being challenged in this appeal.

I have heard counsel for the parties at length and with their able assistance gone through the record of the case.

In this appeal, the question of law which would arise for consideration is:-

“Whether the relief granted by the first appellate Court is contrary to the findings arrived at by it in the previous paragraphs?”

Before me, there is no appeal against the finding given by the trial Court that defendant no.1 is in cultivating possession of the suit land as tenant under the “Bhondedars”. The only challenge before me is that while concluding, the learned first appellate Court had committed an error in recording a finding that plaintiffs and defendants no.2 to 6 are “Bhondedars” and are in cultivating possession. This finding is obviously erroneous.

Once the first appellate Court had recorded a finding of fact

that defendant no.1 is in cultivating possession under the “Bhondedars”, then there was no occasion for the first appellate Court to declare the “Bhondedars” to be in cultivating possession.

Still further I have examined the revenue record, which is available on the file. A close scrutiny of the revenue record shows that defendant no.1-appellant is recorded as tenant under the “Bhondedars”. This entry is continuous and uninterrupted but have one entry with regard to defendant no.1 being mortgagee. There is no serious challenge to the finding of the Court that the aforesaid entry of mortgagee is erroneous.

Defendant no.1 is recorded as a tenant in the revenue record. Plaintiff when appeared in the witness box also admitted the fact that they had given the land to defendant 1-appellant in tenancy.

In view of the above, the question of law framed earlier is answered in favour of the appellant.

The decree passed by the first appellate Court is modified. Plaintiffs and defendants no.2 to 6 are declared “Bhondedars”, however, defendant no.1 is declared to be in cultivating possession as a “tenant” under “Bhondedars”.

The regular second appeal is allowed.

September 13, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No