

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

**RSA No.741 of 2010 (O&M)
Date of Decision:18.08.2017**

Khacheru

...Appellant

Versus

Abhimanue Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagjeet Beniwal, Advocate,
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.3379 & CM No.3380-C-2017

Delay in filing the restoration application is condoned. Appeal
is restored to its original number.

CM No.3381-C-2017

Application to bring on record legal heirs of appellant is
allowed, subject to all just exceptions.

CM No.2083-C-2010

Allowed as prayed for.

CM No.2084 & CM No.2085-C-2010

Delay of 4 days in filing the appeal and delay of 148 days in
refilling the appeal is condoned.

Main case:

Plaintiff is in Regular Second Appeal against the concurrent
finding of fact arrived at by the Courts below.

Plaintiff had filed a suit for declaration pleading that the

plaintiff and late Sh. Ram Saran were tenants in possession of the land on payment of nominal rent under defendant No.1. Plaintiff claimed that they be declared first as occupancy tenants and then consequently owners of the property.

Defendant contested the suit. It was pleaded that the plaintiff got entered his name in the revenue record as co-tenant with Sh. Ram Saran. It was asserted that the entries have been changed without notice to the defendant-owner.

Learned trial Court after appreciating the evidence available on the file recorded as under:

“14. After hearing the arguments and perusal of record on file, this court is of the view that admittedly, there is nothing on file to prove the plaintiff has been paying the nominal rent. From the bare perusal of jamabandi for the year 1955-56, it reflects Chakota Sal Tamam Rs.42/- regarding 18 Kanals 13 Marlas which is the disputed land and further jamabandi for the year 1966-67 Ex.P5 reflects the entry of Chakota Sal Tamam Rs.20/- regarding killa no.8/17 and Chakota Sal Tamam Rs.42/- regarding killa no.8/4/2(7-14). Remaining jamabandies placed on record like Ex.P1 for the year 1996-97, Ex.P3- jamabandi for the year 1986-87, Ex.P4 jamabandi for the year 1976-77, reflects the same position. This court is of the view that in the year 1952-53 as alleged by plaintiff, that they were inducted as a tenant by the father of defendant no.1 but an amount of Rs.42/- regarding 18 kanals 13 marlas land

which is the disputed land is not a nominal rent, rather it is a substantial amount. Plaintiff has failed to prove that there was any agreement between the ancestors of the plaintiff and father of the defendant that plaintiff will never be ejected. Now at the later stage, defendants have filed a petition before the Asstt. Collector for the execution of Kabuliatnama regarding Batai-Tihai which has been decreed by the revenue court in favour of the defendants which is evident from the copy of Judgment and decree dated 11.09.03 Ex.D1. Resultantly, plaintiff has failed to prove that plaintiff has been a tenant on the nominal rent, rather, there is an admission of PW Nathhi to the effect that when the land was given to Khadakia for cultivation, he was present and it was settled Batai-Tihai. Khacheru has also admitted this fact that this land was given on Chakota.”

First appeal filed by the plaintiff was also dismissed after reappreciating the evidence available on the file.

I have heard the learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the Courts below have not appreciated the evidence available on the file. He has further submitted that there is misreading of evidence.

I have considered the submissions, however, I am unable to agree. The judgments passed by the Courts below are well reasoned and detailed. Counsel for the appellant was not able to point out any substantive

error or misreading of evidence which would change the decision of the Courts. Minor variations in the evidence would not enable this Court to interfere in the concurrent finding of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

18.08.2017
sk

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