

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

Date of decision: 06.10.2017

RSA No.1224 of 2016 (O&M)

Shardhanand & others

...Appellants

Vs.

Kanwar Kishan (deceased) through his LRs & others

...Respondents

RSA No.1225 of 2016 (O&M)

Shardhanand & others

...Appellants

Vs.

Kanwar Kishan (deceased) through his LRs & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjay Vij, Advocate,
 for the appellants.

Mr. Prateek Gupta, Advocate,
 for the respondents.

RAJIV NARAIN RAINA, J.

1. The plaintiff-appellants Shardhanand and others are in second appeal before this Court challenging the judgment and decree dated 18.12.2015 by which decree two appeals arising out two suits, one filed by the present appellants and the other by respondents have been decided.

2. The two suits filed by either of the parties against each other are described as Suit - A and Suit - B which descriptions shall facilitate in narrating the facts in brief pleaded in the said two suits by the respective parties as the common judgment and decree was passed by the Civil Judge (Junior Division), Gurgaon.

3. **Suit - A:** Sharadhanand etc. (plaintiffs-appellants) filed civil suit for declaration that they are in actual cultivating possession of the land in dispute as *Gair Mourisi* since more than 30 years since the time of their forefathers and they have acquired ownership rights qua the property in dispute under the provisions of Punjab Tenancy Act. It has further been averred that in the revenue records they have been wrongly recorded as *Gair Mourisi Doyam* under Moti Ram etc. whereas they never tilled and cultivated the suit land. On the basis of wrong entries, the defendants want to take forcible possession and also had started interfering in their peaceful possession of the suit property and thus they may be declared as owners in possession of the property in dispute.

4. On notice, the defendants in Suit - A appeared and filed their written statement. Apart from taking various preliminary objections on merits, it was claimed that the defendants had given the suit property to Moti Ram etc. as Licencee and said Moti Ram etc. without their permission and knowledge allowed the plaintiffs-appellants (Sharadhanand etc.) to cultivate the suit property and their possession was not that of *Gair Mourisi* as claimed by the plaintiffs-appellants and they prayed for the dismissal of the suit filed by plaintiffs-appellants (Sharadhanand etc.).

5. **Suit - B:** Kanwar Krishan etc. who were impleaded as defendants in Suit - A by the plaintiffs-appellants filed their independent suit in a representative capacity against the present plaintiffs-appellants for possession claiming that they are owners in possession of the suit property and Moti Ram etc. were in permissive possession of the same under them and without their knowledge and consent they have inducted defendants No.4 to

23 (Sharadhanand etc.) who have got no right to remain in possession of the suit property and, therefore, the suit filed by them for possession be decreed.

6. In this suit the plaintiffs-appellants before this court and defendants No.4 to 23 before the courts below in their written statement filed, claimed that they have perfected their possession by way of adverse possession.

7. The trial Court vide order dated 06.04.2011 consolidated both the suits and treated Suit - A as the lead case.

8. It is apparent on record that the plaintiffs-appellants led their evidence both orally as well as documentary in the shape of jamabandies on the record of the case whereas Kanwar Krishan etc. neither produced any oral or documentary evidence on record either in Suit - A being defendants or in Suit - B as plaintiffs-appellants.

9. The trial Court after taking into consideration the oral as well as documentary evidence concluded that since the plaintiffs appellants are in possession of the land in dispute and recorded as *Gair Mourisi Doyam* in the revenue record, therefore, in view of the settled law the status of an occupancy tenant can be determined only between the tenants and landlords and sub tenants under the occupancy tenants cannot acquire occupancy rights and thus declined the relief of declaration to the plaintiff-appellants. However, since it was found that the plaintiffs-appellants are sub tenants at Chakota of Rs.300/- per annum, it was held that in case of agricultural land, the ejectment could be sought under the provisions of Punjab Security of Land Tenures Act, 1953 and suit for ejectment of a tenant /sub tenant of agricultural land was not maintainable before the Civil Court. The suit which was filed by Kanwar Krishan etc. for possession was dismissed, meaning

thereby, the only protection to the present plaintiff-appellants granted by the trial Court was that they can be ejected only by means of proper ejectment application and before the appropriate forum of competent jurisdiction.

10. Both the parties filed their respective appeals against the judgment and decree dated 24.12.2012 passed by the Civil Judge (Junior Division), Gurgaon before the learned First Appellate Court at Gurgaon. Both the appeals were heard together by the Additional District Judge, Gurgaon, who dismissed the appeal of the plaintiff-appellants (Sharadhanand etc.), however, allowed the first appeal filed by Kanwar Krishan etc. vide judgment and decree dated 18.12.2015 thereby decreeing the suit for possession filed by Kanwar Krishan etc.

11. The judgment and decree passed by the First Appellate Court has been challenged by the plaintiffs-appellants before this Court by filing two appeals which are being disposed of by this order.

12. While opening the arguments the counsel for the appellants has submitted that the perusal of the judgment and decree passed by the learned Lower Appellate Court without considering the material on record and even without discussing the same pronounced judgment although as per the provisions of law i.e. Section 96 read with Order 41 Rule 31 CPC the Lower Appellate Court being both the court of fact and law had to record findings based on entire material available on record as well on each and every issue. Apart from this it has also been contended that proper procedure for seeking ejectment of even a sub tenant is provided under provisions of Section 9(vi) of the Punjab Security of Land Tenures Act, 1953 as the definition of tenant also includes sub tenant and suit for possession filed against them before the Civil Court was not maintainable for seeking possession.

13. It is further argued by Mr. Sanjay Vij that the onus to prove the fact that Moti Ram etc. were Licencees of Kanwar Krishan-plaintiffs as claimed by them in their suit for possession neither the plaintiffs had appeared nor produced any other witness in support of their claim nor did they produce any documentary evidence to establish the Licence and the Lower Appellate Court even without advertting to and discussing the evidence available on record and produced by the plaintiffs-appellants herein and even without giving any findings regarding Licence straight away decreed the suit of Kanwar Krishan etc.

14. On the other hand, the learned counsel for respondents supported the judgment and decree passed by the First Appellate Court and argued that the suit for possession was maintainable and has rightly been decreed.

15. After hearing both the parties at length, I am of the considered opinion that the relief of declaration as claimed by the plaintiff-appellants having become the owners of the property being occupancy tenants over the land in dispute on account of their long possession has rightly been declined by the Trial Court because admittedly the plaintiffs-appellants have been shown as *Gair Mourisi Doyam* on a *Chakota* of Rs.300/- per annum and being sub-tenant they could not have been conferred with ownership rights by any stretch of imagination.

16. The perusal the judgment passed by the First Appellate Court does reveal that it has not taken into consideration the evidence which was available on record to discuss its import in the facts and circumstances of the case whereas Section 96 read with Order 41 Rule 31 CPC provides the nature and the scope for proper mode of disposal of appeal by the First Appellate Court. A First Appellate Court is a final court of fact and is under a legal duty

to deal with all the issues and pay due regard to the evidence led by the parties before recording its findings and I feel that the First Appellate Court has failed to discharge the obligation placed on it as a First Appellate Court and committed material irregularity in overlooking the relevant record of evidence adduced by the appellants.

17. Though the matter could have been remanded back to the First Appellate Court for re-decision, but keeping in view the fact that the plaintiff-appellants have been recorded as *Gair Mourisi Doyam* in the jamabandies placed on record to which presumption of truth is attached and have gone admittedly un-rebutted, therefore, keeping in view the provisions of Punjab Security Land Tenures Act, 1953, which is a complete and independent Code providing procedure for the ejectment of tenants /sub tenants, the plaintiff-appellants can be and could be ejected only by following proper procedure and action brought before the appropriate and competent authority i.e. the Assistant Collector 1st Grade and if so advised the respondents herein can approach the appropriate authority who would go into the rights and liabilities of the parties and determine them in accordance with law.

18. For the foregoing reasons, these appeals partly succeed on a preliminary point of jurisdiction and the decree in appeal is set aside with liberty to the respondents to avail remedy provided by the Punjab Security Land Tenures Act, 1953 seeking possession of the corpus land as per law in the proper Forum.

06.10.2017
VIMAL

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*