

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

RSA No.5529 of 2016 (O&M)

Date of decision: 03.03.2017

Anil Chaudhary and others

... Appellants

Vs.

Ranjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate
for the appellants.

Mr. Manoj Kumar Taya, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant regular second appeal, at the hands of unsuccessful defendants No.1 to 3, is directed against the impugned judgment and decree dated 20.09.2016 passed by the learned Additional District Judge, whereby first appeal of defendants No.1 to 3-appellants herein, was dismissed and the judgment and decree dated 29.10.2014 passed by the learned trial Court, thereby decreeing the suit for possession and permanent injunction, were upheld.

Shorn of unnecessary details, brief facts necessary for decision of the present appeal, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that the respondents/plaintiffs Ranjeet Singh etc. had

filed a suit for possession as well as permanent injunction against the present appellants/defendants, inter alia, on the ground that Indraj alias Inder son of Karta Ram, who was the predecessor-in-interest of the plaintiffs, was owner of agricultural land measuring 2B-9B comprised by khewat No.1666, khatoni No.2790 khasra No.12268/9803 (0-5); khatoni No.2791, khasra No.12211/7805 (0-8); khatoni No.2792 Khasra No.10095/7811 (0-16); khatoni No.2793, khasra No.10922/893 (0-1) situated in Karnal (hadbust No.1) Tehsil and District Karnal. It was the further case of the plaintiffs that said Indraj had died on 29.10.2008 and the land, mentioned in para No.2 of the plaint, had been mutated in favour of the plaintiffs in equal shares vide mutation No.37246. Plaintiff No.1 had been constituted as General Power of Attorney holder on behalf of the plaintiffs No.2 to 4 vide registered Mukhtianama Aam dated 23.04.2013. It was further submitted by the plaintiffs that Lakhwinder Singh and Dharam Singh, defendants No.4 and 5 were the tenants over 1B-0B land comprised by khasra No.1666, khatoni No.2793, khasra No.10922/893 (1-0) on the payment of 1/3rd batai. It was alleged that about one month back, from the date of filing of the present suit, the plaintiffs came to know that the defendants No.4 and 5 had put defendants No.1 to 3 in possession of the suit land and now they wanted to use the land in question for non-agricultural purposes. Plaintiff No.1 approached to defendants No.4 and 5 for asking as to why and how they have put defendants No.1 to 3 into possession of land under their tenancy, without the consent, then they disclosed that they had sold the suit land to defendants No.1 to 3 and now they (plaintiffs) should settle their score with them (defendants No.1 to 3). Thereafter, plaintiff No.1 contacted the defendants No.1 to 3 and asked them to surrender the possession of the suit land to him, but

they refused to accede his request, hence the suit was filed with the prayer that a decree for possession of the land measuring 1B-0B comprised in khewat No.1666, khatoni No.2793, khasra No.10922/893(1-0) situated in Mouja, Karnal be passed in favour of the plaintiffs and further, a decree for permanent injunction restraining the defendants No.1 to 3 from transferring the land in question in any manner and from raising the structures of any kind over the suit land be also passed.

Having been duly served in the suit for possession and permanent injunction filed by the plaintiffs, defendants No.1 to 3 put appearance before the learned trial Court and filed their joint written statement raising more than one preliminary objections and contesting the claim of the plaintiffs. Defendants No.4 and 5 did not appear to contest the suit despite service and they were proceeded against ex-parte. Plaintiffs filed their replication, controverting the averments taken by defendants No.1 to 3 in their written statement, reiterating their stand taken in the plaint. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff are entitled to the decree for possession, as prayed for?OPP
2. If issue No.1 is proved, whether the plaintiffs are entitled for a relief of permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present suit?OPD
4. Whether the plaintiffs have no locus-standi and cause of action to file the present suit?OPD
5. Whether the suit of the plaintiffs is bad for misjoinder and non-

joinder of necessary parties? OPD

6. Whether the plaintiffs have not come to the court with clean hands and have suppressed the true and material facts from the court?

OPD

7. Whether the suit of the plaintiffs is not properly valued for the purposes of court fee and jurisdiction? OPD

8. Relief.

With a view to substantiate their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have duly proved their case, by leading cogent and convincing evidence. On the other hand, defendants miserably failed to prove their pleaded case. Accordingly, suit for possession and permanent injunction filed by the plaintiffs was decreed by the learned trial Court vide impugned judgment and decree dated 29.10.2014. Feeling aggrieved, defendants No.1 to 3 filed their first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 20.09.2016. Hence this regular second appeal at the hands of defendants No.1 to 3.

Heard learned counsel for the parties.

Learned senior counsel for the appellants, while placing reliance on the judgments of the Hon'ble Supreme Court as well as this Court in **Joginder Singh Sodhi Vs. Amar Kaur, 2005 (1) PLR 364, Ms. Celina Coelho Pereira and others Vs. Ulhas Mahabaleshwar Kholkar and others, 2010 AIR (SC) 603, M/s Speedline Agencies Vs. M/s T. Stanes & Co. Ltd., 2010 (6) SCC**

257, Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass, 2015 (2) RCR (Civil) 198, Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass, 2016 (3) RCR (Civil) 812, Jai Pal Singh and others Vs. Smt. Kapur Kaur, 1967 PLJ 186, Ram Niwas Vs. Ram Parkash etc., 2015 (1) RCR (Civil) 833 and Paramjit Singh Walia Vs. Jagdish Mitter etc., 2016 (1) RCR (Civil) 812, submits that since it was a case of tenancy of agricultural land, the learned Civil Court would have no jurisdiction. He further submits that defendants have taken a specific and categorical stand that they were the direct tenants under landlord Indraj @ Inder, predecessor-in-interest of the plaintiffs. In the alternative, he submitted that in case the direct tenancy was not duly proved on record, in that situation, the appellants ought to have been treated as sub-tenants under defendants No.4 and 5. Learned senior counsel would next contend that in either of abovesaid two situations, it will be only the revenue authorities who would have the jurisdiction to decide the question of tenancy or sub-tenancy and the learned Civil Court would have no jurisdiction. While placing reliance on the site plan (Annexure A-4) placed on record by way of CM No.14668-C of 2016 and other documents Annexures A-2, A-3 and A-5 to A-7, learned senior counsel for the appellants vehemently contended that since the appellants had purchased the area shown in yellow colour in the site plan (Annexure A-4), surrounding the suit land on all the four directions, their possession on the suit land could not have been declared illegal in any manner. He concluded by submitting that since the learned Courts below have failed to appreciate the abovesaid peculiar fact situation of the case as well as the judgments of the Hon'ble Supreme Court, referred to hereinabove, the impugned judgments and decrees have caused manifest injustice to the appellants and the same are not

sustainable in law. He prays for setting aside the impugned judgments and decrees, by allowing the present appeal.

Per contra, learned counsel for the respondents-plaintiffs, while strongly opposing the arguments raised by learned senior counsel for the appellants, submits that the plaintiffs have duly proved their case, by leading their cogent and convincing evidence. Their ownership had never been in question. There was no relationship of landlord-tenant in the present case and because of this strong reason, none of the judgments relied upon by learned senior counsel for the appellants are applicable to facts of the case in hand. Defendants-appellants had been taking self-contradictory stand and had also been changing their stand from time to time as per their suitability. Possession of the appellants-defendants had already been declared unauthorised by Assistant Collector 2nd Grade on the application moved by the defendants themselves, seeking correction in khasra girdawari. Against the order of Assistant Collector 2nd Grade, defendants-appellants have filed their appeal before the Collector, which goes a long way to show that there was no relationship of landlord-tenant. He concluded contending that in such a situation, the learned Civil Court would certainly have jurisdiction to try and decide the suit for possession and permanent injunction, on the basis of undisputed title of the plaintiffs-respondents. He prays for dismissal of the appeal with exemplary costs.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the impugned judgments and decrees passed by the learned Courts below,

recording concurrent findings of facts, have been found factually correct and legally justified, which deserve to be upheld. The appeal is devoid of merit and the same is liable to be dismissed, for the following more than one reasons.

As noticed by both the learned Courts below, defendants No.1 to 3-appellants claimed themselves to be the direct tenants under Indraj @ Inder son of Karta Ram, predecessor-in-interest of the plaintiffs-respondents herein. It was so recorded by the learned trial Court in para 3 of its impugned judgment and also by the learned first appellate Court in paras 3 and 4 of its impugned judgment. However, the stand taken by the appellants of their alleged direct tenancy under Indraj @ Inder was not only factually incorrect but it was misleading also. It is so said because the appellants came at the scene, for the first time, after they purchased the land, surrounding the suit land, by way of two sale deeds Ex.D3 dated 14.10.2011 and Ex.D2 dated 30.01.2013, from defendants No.4 and 5, whereas Indraj @ Inder admittedly died on 29.10.2008 i.e. much before these sale deeds. After the death of Indraj @ Inder-father of the plaintiffs, mutation of inheritance, qua the ownership of suit land, came to be entered and sanctioned in favour of the plaintiffs vide mutation No.37246, thus, plaintiffs became owners of the suit land.

When confronted on the abovesaid pleaded and argued case on behalf of the defendants, as it was the star argument of learned senior counsel for the appellants, he had no answer and rightly so, it being a matter of record. While appearing as DW1, appellant Anil Chaudhary falsely deposed before the Court that defendants No.1 to 3 were in possession of the suit land, being tenants of Indraj @ Inder. It has been so recorded by the learned first appellate Court in para 17 of its impugned judgment. Once Indraj @ Inder, predecessor-

in-interest of the plaintiffs had died on 29.10.2008 and defendants No.1 to 3 purchased the land from defendants No.4 and 5, after about three years of death of Indraj @ Inder, by way of abovesaid two sale deeds Ex.D1 dated 14.10.2011 and Ex.D2 dated 30.01.2013, their pleaded and argued case was that they were direct tenants under Indraj @ Inder, was bound to fall flat, it being not only a false plea taken but it was misleading also. This also speaks volumes about the conduct of defendants No.1 to 3-appellants herein.

In fact, in the present case, there was no tenant-landlord relationship between the plaintiffs and defendants No.1 to 3. When learned senior counsel for the appellants was asked to refer to any relevant material in this regard, he was unable to refer to any such material, which may even remotely suggest that either the appellants were direct tenants under Indraj @ Inder or they were even sub-tenants through defendants No.4 and 5. As a matter of fact, learned senior counsel for the appellants was rightly feeling handicapped in this regard, because there was no such evidence available on record, which might have been produced by defendants No.1 to 3-appellants herein, in support of their pleaded case.

On the other hand, true fact was that appellants being strong persons, having sufficient means at their disposal, illegally and forcibly occupied the suit land, owned by the plaintiffs, in connivance with defendants No.4 and 5. It is also pertinent to note here that when the appellants found that their possession was contrary to the revenue record, they approached Assistant Collector 2nd Grade, seeking correction of khasra girdawari in their name. Interestingly, defendants No.1 to 3-appellants neither impleaded Indraj @ Inder nor his legal representatives as party-respondents in their application for

correction of khasra girdawari before Assistant Collector 2nd Grade.

Reason was obvious. They were proceeding on a malafide intention to achieve their ulterior motive to get their illegal and forcible possession converted into an authorized possession, with the help of revenue record and that too at the back of owners of the suit land. However, they could not succeed in their ill-designed act and their application for correction of khasra girdawari came to be dismissed by Assistant Collector 2nd Grade, declaring their possession as illegal and unauthorised. Thereafter, they filed the appeal before the learned Collector, Karnal, as recorded by the learned first appellate Court in para 4 of its impugned judgment. Having said that, this Court feels no hesitation to conclude that defendants No.1 to 3-appellants have not been found to be bonafide litigants by this Court. They had been misusing the process of law, taking false and misleading averments in their pleadings and falsely deposing before the Court. In this view of the matter, the irresistible conclusion is that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees, which deserve to be upheld, for this reason also.

Coming to the judgments relied upon by learned senior counsel for the appellants, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to the appellants, being distinguishable on facts. In fact, all these judgments were on entirely different set of facts, because material fact of tenancy was not in dispute therein. All these judgments were based on peculiar facts, wherein tenancy was admitted. In the case in hand, as noticed hereinabove, there was no relationship of landlord-tenant.

No evidence, even worth the name, was available on record, which

may remotely suggest that the appellants were either tenants or sub-tenants under Indraj @ Inder or defendants No.4 and 5. Claim of tenancy of the appellants was based on their false and incorrect assertion without any evidence of any kind, whatsoever, thus, none of the cited judgments are applicable to the facts of the present case. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan Vs. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12.....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision

and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact

situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (AIR p. 14 C-D)

"The matter cannot, of course, be settled merely by treating

the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in *Shepherd Homes Ltd. V. Sandham (No.2)* (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT*,

AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Reverting to the facts of the case in hand, appellants have contradicted themselves to such an extent that their entire case was based on falsehood. They miserably failed to show that they were falling within the definition of tenants either under the Punjab Tenancy Act, 1887 or under the Punjab Security of Land Tenancy Act, 1953. False averments taken in the written statement, in the absence of any supporting evidence, would be of no use. That is what the entire case of the appellants is. It is also pertinent to note here that when during his cross-examination, DW1 Anil Chaudhary-appellant No.1 herein, was caught at the wrong foot, he had to admit that the suit land was being cultivated by him, only because of the reason that the surrounding

land was purchased by him and there was no passage to the land of Indraj Singh. It was so recorded by the learned first appellate Court in para 20 of its impugned judgment.

He also had to admit that he was not aware as to when Indraj @ Inder died. He claimed that he used to pay batai to Indraj @ Inder about 5-7 years back, which was also factually incorrect. It is so said because the appellants-defendants No.1 to 3 came at the scene much after the death of Indraj @ Inder who died in October, 2008, whereas the appellants purchased the land from defendants No.4 and 5 for the first time in October, 2011 and then by another sale deed in January, 2013, adjoining to the suit land. Thus, the appellants had no legs to stand as they have unsuccessfully tried to build the castle in the air.

Similarly, DW2 Rajinder Parshad made a false statement before the Court. He said that he was watching defendants No.1 to 3 cultivating the suit land for the last 25-30 years. However, he had to admit in his cross-examination that he was knowing Anil Chaudhary and defendants only from 15-20 years. He also admitted that Anil Chaudhary-appellant No.1/defendant never paid any rent (batai) either to Indraj or legal heirs of Indraj in his presence. He was unable to tell the Court as to under what capacity, Anil Chaudhary-defendant/appellant No.1 was cultivating the suit land. In this view of the matter, it can be safely concluded that defendants No.1 to 3-appellants miserably failed to bring on record any plausible evidence to prove their pleaded case.

Before arriving at just conclusion, learned Additional District Judge very minutely considered and appreciated all the relevant facts and circumstances of the case as well as the evidence available on record, in correct

perspective. Cogent findings recorded by the learned first appellate Court in paras 21 and 22 of its impugned judgment, which deserve to be noticed here, read as under: -

“On perusal of the documents Ex.D2 and Ex.D3, which are the sale deeds in favour of defendants no.1 to 3 executed by Dharam Singh and Lakhwinder Singh etc. pertaining to surrounding land around the suit land, it would reveal that these sale deeds had been executed only on 14.10.2011 and 30.1.2013, meaning thereby that the defendants no.1 to 3 came into possession of the surrounding land only after the death of Indraj who had admittedly died in the year 2008. DW1 has given a reason that because the suit land was surrounded by the land owned by him, therefore, he was cultivating the suit land by taking the same from Indraj, but this assertion is falsified by the documents Ex.D2 & Ex.D3 because defendants no.1 to 3 came into picture only in the year 2011-2013 when they had purchased the surrounding land. Even the assertion of DW2 that he had been watching the defendants No. 1 to 3 by cultivating the suit land from the last 25-30 years is also a false assertion and there is no evidence on record to prove that the defendants no.1 to 3 were the tenants either of Indraj or under the present plaintiffs. Admittedly, defendants no.1 to 3 succeeded in getting a khasra girdawari entry in their favour which is Ex.D1, but on perusal of the same, it would reveal that vide Rapat no. 120 dated 15.10.2012, it was ordered by ACIIG that Anil Chaudhary, Smt. Neha and Karan Chaudhary, who are defendants no.1 to 3,

are in unauthorized cultivating possession and this is the case of the plaintiffs that defendants no. 4 & 5 had put the defendants no.1 to 3 into possession illegally without their consent. Hence, the defendants have not been successful to prove themselves as tenants either under the Act of 1953 or under the Punjab Tenancy Act, 1887. Hence, they cannot claim that they could have been got evicted by the plaintiffs only under the Punjab Security of Land Tenure Act, 1953 because they do not fall under the definition of tenant. The defendants in their respective cross-examinations have admitted this fact that now the nature of the suit land has been changed and the adjoining land has been carved out in plots and even the roads have been constructed thereon. Similarly, there is no iota of evidence to prove that they had ever paid 1/3rd batai to said Indraj at any point of time.

It was also contended by learned counsel for the appellants that because the plaintiffs had admitted that the defendants no.4 & 5 were their tenants and they subletted the suit land in favour of the defendants no.1 to 3, then, in that eventuality the defendants no.1 to 3 could have been got evicted only under the Act of 1953, but this argument is devoid of any merits because the defendants No.1 to 3 never conceded themselves as sub tenants under the defendants no.4 & 5, rather they claimed themselves to be direct tenants under Indraj but they have been failed to prove as such. The defendants no.4 & 5 did not appear before the court despite their service and they never took this objection that being tenants

*they could have got evicted only under the tenancy act, rather as per plaintiffs when they met to defendants no.4 & 5 asking as to why they had abandoned the possession of the suit land in favour of defendants no.1 to 3 then they replied that they have already sold their entire land to defendants no.1 to 3, therefore, now the plaintiffs should settle their score with defendants no.1 to 3, meaning thereby that the defendants no. 4 & 5 had already parted with the possession, and when they never contested the case of the plaintiffs, then learned trial court rightly decreed the suit of the plaintiffs as a civil court was having jurisdiction in view of the case law authority titled as **Gurdeep Singh & Ors Vs Dera Gosain and anr** (cited supra), wherein the Hon'ble Punjab and Haryana High court in concluding para of the judgment has been pleased to hold that “the provisions of Punjab Tenancy Law read with Punjab Security of Land Tenure Act, 1953 are applicable only in case the landlord wants to eject the tenant from the agricultural land. In the present case, there is no evidence that the defendants are tenants on the suit land. Once it has been found that they are not the lessee of the suit land it cannot be said that the present suit is not maintainable in view of the provisions of Punjab Tenancy Laws”. In this case also, defendants no. 1 to 3 have been failed to prove themselves as tenants or lessee and when they have been held by the revenue authority in unauthorized possession, then the suit was well maintainable. The case law authority relied upon by learned counsel for the appellants i.e. **Sham Lal vs. Deepa Dass***

Chela Ram Chela Garib Dass (supra) is not applicable on the facts of this case because in that case law authority, ejectment of tenant had been allowed by the civil court on expiry of tenancy period and then it was held by Hon'ble Supreme court that only the revenue court was empowered to take action for eviction of tenant in the manner provided under the Act, but in this case, the appellants have been failed to prove themselves as tenants."

Once the appellants have been found taking false, misleading and self-contradictory plea, trying to mislead the Court, while misusing the process of law, they were bound to fail. That is what has been held by both the learned Courts below. Cogent and concurrent findings returned by the learned trial Court as well as learned first appellate Court deserve to be upheld. Further, at the own instance of the appellants, their possession had already been declared illegal and unauthorized by Assistant Collector 2nd Grade, Karnal, in their application for correction of khasra girdawari, against which their appeal was stated to be pending before the Collector.

The case of plaintiffs-respondents was based on truth, whereas the case of appellants-defendants No.1 to 3 was based on falsehood. It is the law of nature that truth must prevail. Further, a person, who is not a bonafide litigant, has no place in a Court of law and the justice delivery system. The litigant who tries to misuse the process of law does not deserves any sympathy from the Court as well. The cumulative effect of peculiar fact situation, evidence available on record, coupled with the attending circumstances of the present case, suit of the plaintiffs was bound to be decreed and the same has been rightly decreed by both the learned Courts below, therefore, the impugned

judgments and decrees deserve to be upheld, for this reason as well.

In this regard, the observations made by the Hon'ble Supreme Court in paras 33 to 37 of its judgment in **Kishore Samrite Vs. State of U.P. and others, 2013 (2) SCC 398**, which aptly apply to the facts of the case in hand, read as under: -

*“The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”. (Refer : **Tilokchand H.B. Motichand & Ors. v. Munshi & Anr., [1969 (1) SCC 110]**; **A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. (2012) 6 SCC 430**; [Chandra Shashi v. Anil Kumar Verma, 1995 \(1\) RCR \(Criminal\) 210 : \(1995\) SCC \(1\) 421](#); **Abhyudya Sanstha v. Union of India & Ors., 2012 (1) S.C.T. 641 : (2011) 6 SCC 145**; **State of Madhya Pradesh v. Narmada Bachao Andolan & Anr., 2011 (5) R.C.R.***

(Civil) 397 : (2011) 7 SCC 639; Kalyaneshwari v. Union of India & Anr., 2012 (2) R.C.R. (Civil) 626 : 2012 (2) Recent Apex Judgments (R.A.J.) 242 : 2012 (2) S.C.T. 551 : (2011) 3 SCC 287).

The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the

process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors., [(2008) 12 SCC 481].

Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, 1997 (3) R.C.R. (Criminal) 62 : (1996) 5 SCC 530).

In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material facts, approaching the court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the court.”

There was no relationship of landlord-tenants in the present case, nor the appellants were able to establish this relationship of landlord-tenants, by producing on record the relevant documentary or oral evidence. Their possession was rightly declared illegal by the learned Assistant Collector 2nd Grade. In this view of the peculiar fact situation obtaining on record of the present case, the learned Civil Court would have the jurisdiction to try and decide the suit of the plaintiffs for possession and permanent injunction, on the basis of undisputed title of the plaintiffs. Defendants No.1 to 3-appellants had also sufficient time and occasion to produce defendants No.4 and 5 as DW before the learned trial Court, in support of their pleaded case of alleged sub-

tenancy under defendants No.4 and 5. However, defendants No.1 to 3-appellants did not produce either defendant No.4 or defendant No.5 as DW, for the reasons best known to them, thereby withholding the best evidence. The only reason could be that the appellants-defendants No.1 to 3 would be apprehending that if either defendant No.4 or defendant No.5 appeared as DW before the Court, their deposition may not expose the appellants-defendants No.1 to 3, any further. The fact remains that there was no relevant material available on record, which may prove the relationship of landlord-tenant.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

- 1. *R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others, 1995 (5) SCC 698.***
- 2. *Inder Singh and another Vs. The Financial Commissioner, Punjab and others, 1997 (11) SCC 206.***
- 3. *Ms. Celina Coelho Pereira and others Vs. Ulhas Mahabaleshwar Kholkar and others, 2010 (1) SCC 217.***
- 4. *Youdhister Vs. Siri Ram and others, 1996 (3) RCR (Civil) 706.***
- 5. *Faridabad Complex Administration, Faridabad and another Vs. Gopi Chand and another, 2010 (65) RCR (Civil) 395.***
- 6. *Kanhi Ram Vs. Umesh Kumar and another, 2013 (1) RCR (Civil) 790.***

Finally, during the course of hearing, learned senior counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments. He also failed to refer to any question of law, much less substantial question of law, which is sine qua non for entertaining a regular

second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Concurrent findings of facts recorded by both the learned Courts below have been found based on sound reasons. 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 since no jurisdictional error or any other illegality has been found in either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The regular second appeal, 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, instant regular second appeal stands dismissed, however, with no order as to costs.

03.03.2017

vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No