

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.1185 of 2017

Date of decision:16.5.2017

Bhagu Ram

...Appellant

Versus

Smt. Sugani widow (deceased) through her legal representative and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Naveen S. Bhardwaj, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration and permanent injunction was dismissed by the learned trial Court, vide its impugned judgment and decree dated 14.1.2014 and his first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 29.11.2016.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that the appellants-plaintiffs were residents of village Siwani, Tehsil Siwani, District Bhiwani. They were agriculturist by occupation. Ram Kumar son of Kushla Ram and Ramphal son of Ram Kumar, have died. Appellants-plaintiffs were their legal representatives. Earlier the suit land comprised in Khewat No.1056/2065, Khatoni No.1655/2112 min, Khasra No.371//6 (3-0), 15

(4-2), 16 (1-11), 372/8/2 (6-8), 9 (8-0), 10 (8-0) 11(8-9), 12 (5-18) 13 (4-2) 14 (4-0) and 15 (4-2) Kittee 11, total measuring 57 Kanals 12 Marlas, situated at village Siwani Panna Alman, Tehsil Siwani, Districit Bhiwani, was in-cultivable. As per jamabandi for the year 1994-95, the suit land was earlier comprised in Khewat No.1056, Khatoni No.2065, Khasra No.206 min (36-0), total measuring 36 Bigha 0 Biswa. The previous owners of the suit land had given the same to the predecessors-in-interest of the appellants-plaintiffs for cultivation on nominal rent with the condition that they would make it cultivable. It was also agreed that the predecessors-in-interest of the plaintiffs would not be ejected from the suit land forever. Their predecessors-in-interest made the suit land cultivable at their own expenses. The predecessors-in-interest of the appellants-plaintiffs were paying the nominal rent equivalent to the land revenue. The appellants-plaintiffs came into cultivating possession of the suit land as gair marusi tenant prior to the jamabandi for the year 1970-71 on payment of nominal rent at the rate of 33 paise per bigha, which is equivalent to the land revenue. The appellants-plaintiffs acquired the occupancy rights qua the suit land as per Section 5 & 8 of the Punjab Tenancy Act. They also perfected their title as per the provisions of the Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952. The respondents-defendants threatened the appellants-plaintiffs to dispossess them from the suit land illegally and forcibly.

Since both the defendants died during proceedings of the civil suit, their legal representatives of were brought on record, who filed their joint written statement, taking more than one preliminary objections. On

completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiffs have become owners in possession of the suit property under the provisions of Punjab Occupancy Tenancy (Vesting of Proprietary Right) Act? OPP.
2. Whether the plaintiffs are entitled for decree for permanent injunction on the ground taken in the plaint? OPD
3. Whether the suit is wrong and against the facts? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit is bad for non-joinder of necessary parties? OPD
6. Whether the plaintiffs have no cause of action or locus-standi to file the present suit? OPD
7. Whether the Court has no jurisdiction to entertain and try the present suit? OPD
8. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiffs failed to prove their case. They could not substantiate their plea for declaration and permanent injunction qua their occupancy rights on the suit land. Accordingly, their suit for declaration and permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 14.1.2014. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 29.11.2016. Hence this second appeal, at the hands of the plaintiffs, i.e. appellant and proforma respondents.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below, will make it crystal clear that the plaintiffs/appellants have miserably failed to prove their pleaded case. As per the relevant provisions of law contained in Section 5 of the Punjab Tenancy Act, 1887 ('the Act' for short) and also the relevant provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, ('the Act of 1952' for short), plaintiffs failed to prove on record that they had been paying only the land revenue and nothing beyond that. Appellants being the plaintiffs, onus was on them to prove their pleaded case by leading cogent and convincing evidence. However, they failed to do so. Further, appellants-plaintiffs have been found changing their stand from time to time as per their suitability, thus, contradicting themselves to such an extent that they were bound to fail.

Admittedly, neither there was any lease deed between the predecessors-in-interest of the appellants and the predecessors-in-interest of the respondents nor there was any rent receipt except the self-serving statement of appellant-plaintiff No.1. There was hardly any other supporting and worth reliance evidence available on record. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Appellants also failed to prove their case by producing relevant evidence on record as to when they or their predecessors-in-interest came into possession over the suit land and in which capacity because there was

no lease deed. They also failed to prove as to when their possession came under threat and from whom. Initially, plaintiffs-appellants filed the suit against general public. Later on, they themselves gave up the general public as party to the suit, thus, plaintiffs-appellants were found playing hide and seek with the court because of which, they have not been found to be bonafide litigants. Under these facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

It is a matter of record that there were about 200 share holders in the joint khewat, including the suit land. Plaintiffs-appellants did not implead other co-sharers as party-defendants in their suit for the reasons best known to them. It was plaintiff-appellant No.1, who admitted in his cross-examination, while appearing as his own witness as PW-1 that he never paid either any land revenue or 1/3rd rent to the land owners. In view of the provisions of law contained in Section 5(2) of the Act, plaintiffs were bound to plead and prove that they had been paying the land revenue either to the owners or to the State. In this view of the matter, there is no escape from irresistible conclusion that the plaintiffs-appellants miserably failed to prove their case, in accordance with law because of which they were bound to fail. That is what has been held by both the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

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

1. *Tikka Ram and another Vs. Kartara (deceased) through LRs and another, 2008 (12) SCC 634 (SC).*
2. *Jagadeesh and another Vs. State of Karnataka and others, 2008 (12) SCC 624 (SC).*
3. *Union of India Vs. Ibrahim Uddin and another, 2012 (8) SCC 148;*
4. *S.R.Srinivasa Vs. S.Padmavathamma, 2010 (5) SCC 274;*
3. *Jagjit Singh Vs. Financial Commissioner, Haryana and others, 1981 PLJ 367 (P&H).*
4. *Suraj Bhanand and others Vs. Mir Singh, 1987 R.R.R. 19 (P&H)*
5. *Gurdershan Singh and others Vs. Hardy Singh and others, 1992 (1) R.R.R. 243 (P&H).*
6. *Ram Lal and others Vs. Jagdish Singh and others, 2004 (3) RCR (Civil) 800 (P&H).*
7. *Mohan Lal Vs. Union of India and another, 2012 (4) RCR (Civil) 160 (P&H);*
8. *Jaspreet Singh Vs. Manoj Kumar, 2009 (4) Law Herald 2579 (P&H).*
9. *Jit Singh Vs. Umrao Singh and others, 2010 (4) PLR 550 (P&H).*
10. *Om Parkash Vs. Chaudhri Ram, 2013 (13) RCR (Civil) 297 (P&H).*
11. *RSA No.430 of 1991 (Singh Ram Vs. Surat Singh), decided on 19.4.2017.*

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 23 to 25 of its impugned judgment, which deserve to be noticed here, read as under:-

“Appellants-plaintiffs have claimed in their suit that their rights as occupant tenants ripened into the rights of ownership by efflux of time. Admittedly, the tenancy is a bilateral agreement. One of the plaintiffs namely Bhagu Ram, appeared in the witness-box as PW1 and stated during his cross-examination that he had started cultivating the suit land 55/56 years ago. Prior to him, his ancestors namely Prahlad, Tulsi Ram and Ram Kumar, were in possession of the suit land. He also admitted that at no point of time, he had paid any land revenue/batai-tihai to the owners. He also failed to disclose that at whose instance his forefathers were inducted as tenants over the suit land. Meaning thereby, appellant-plaintiffs themselves failed to prove on the record on which date their forefathers entered over the suit land and their tenancy was commenced and further under whom their tenancy came into existence.

The appellant-plaintiff Bhagu Ram (PW1) himself has stated that he has started cultivating the suit land 55-56 years ago. He also stated that his forefathers entered over the suit land much before his entry over the suit land. Appellants-plaintiffs have relied upon the first Jamabandi for the year 1970-71, before the learned trial Court and thereafter on the subsequent revenue record. In this appeal, appellants-plaintiffs have been allowed to exhibit the jamabandi for the year 1965-66 and khasra girdawari. He has not produced the previous jamabandies in order to establish that their forefathers entered over the suit land as tenants much before their entry. It is well-settled law that the party which withholds the best evidence available with it, the Court is required to draw the adverse inference against such a party. It appears that the appellants-plaintiffs concealed the earlier jamabandies intentionally and those might be containing some entries against them.

As per the Khatoni paimaish Ex.P1 and

jamabandies placed on the record, the suit land was owned by number of co-sharers. Appellant-plaintiff Bhagu Ram, while appeared as PW1 admitted that approximately there are two hundred share holders in the khewat. He has not impleaded the other co-sharers as party to the suit. In the absence of other-co-sharers he can not claim his rights of occupancy tenants have ripened into ownership in respect of the suit land. PW1 Bhagu Ram, in his cross-examination admitted that he has never paid the land revenue or batai-tihai to the land owners. Meaning thereby, he can not take the benefit of default of his own act and conduct. He was duty bound to prove that he had paid the land revenue to the owners or to the State in accordance with law. He has also not adduced any evidence that the rent at the rate of 33 paisa per bigha was equivalent to the land revenue and Cess. This is another flaw in the case of the appellants-plaintiffs.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

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 the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

16.5.2017

(RAMESHWAR SINGH MALIK)

mks

JUDGE

Whether speaking/reasoned? Yes

Whether reportable? Yes