

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.56 of 1988 (O&M)
Date of decision: 09.01.2018

Dewan Ram (deceased) through his LRs
and others

..... Appellants

Versus

Sarwan Ram (deceased) through his LRs
and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aakash Singla, Advocate
for the appellants.

Mr. Sanjiv Gupta, Advocate
for respondent No.2.

Mr. G.S. Bal, Sr. Advocate with
Mr. A.D.S. Bal, Advocate
for respondent No.7.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in regular second appeal against the judgment passed by learned First Appellate Court accepting the appeal of the defendants and resulting in disposal of the suit filed by the plaintiffs-appellants for possession.

Plaintiffs filed a suit for possession of the agriculture land measuring 16 acres along with a tubewell bore fitted with electric motor, diesel engine and for recovery of mense profits till delivery of possession. Plaintiffs had set up a case that they were in self-cultivating possession of the suit property till June, 1984 when on account of curfew in the district, defendants took over forcible possession in the year 1984.

The defendants contested the suit and pleaded that they are tenants over the land in dispute on payment of 1/3rd batai for the last 20 years.

Learned trial Court decreed the suit relying upon the revenue record which shows that the plaintiffs were in self-cultivating possession till June, 1984 and thereafter, it is the defendants who are in cultivating possession of the land forcibly.

First appeal preferred by the defendant-respondent has been accepted by the learned First Appellate Court after re-appreciating the evidence available on the file. Learned First Appellate Court has relied upon the statement of one of the plaintiff PW-1 which makes an interesting reading. In cross-examination, he admits that he knows the defendants for the last 10-12 years. He further makes a vague statement feigning ignorance to the effect that he and his brother had given possession of the suit property to the defendants for the last 25-30 years. Relevant part of the statement of the plaintiff is extracted as under:-

“I am known to Sarwan Singh and his son Dayal. I am known to them for the last 10/12 years. It is incorrect again said I do not remember, if I and my brother had given the possession of the suit land to the defendant 25/30 years ago. I do not remember, if the defendants used to cultivate the suit land 20/25 years ago. No written complaint was lodged however. I did not moved any said complaint before the Higher Authorities. We used to cultivate the land through buffaloes. I have no Tractor-Trolly. I did not know, if Sarwan Ram has got any Tractor-Trolly. It is wrong again said I do not remember if Sarwan Ram cultivated the land in dispute for the last 25/30 years back voluntarial said I am cultivating the land in dispute for the last 18 years. I have agriculture implements like Datia, Khurpa, Hall-Panjali, Khassi only. Except these above said items, I have

got no agricultural implements.”

From the reading of the aforesaid statement of the plaintiff, learned First Appellate Court has drawn a conclusion that the case set up by the plaintiff is false and in fact, the defendants are cultivating the land as tenants over the property. Learned First Appellate Court also relied upon the receipts of the electricity bill produced by the defendants before 1984 Ex.D-5/2, D-5/3 and D-5/4 from 1981 to April, 1986.

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

Learned counsel for the appellant has submitted that during the pendency of the suit, defendant-appellant filed an application for correction of the revenue record which was dismissed. He submits that in view of the fact that the revenue record does not show the defendants to be tenants over the land in dispute and there being no receipt of payment of batai, therefore, the learned First Appellate Court has committed an error in reversing the judgment.

On the other hand, learned counsel for the respondent has once again relied upon the statement of the plaintiff which has been extracted above. He has also referred to the electricity bills of the tubewell which has been installed in the land in dispute deposited by the defendant before 1984.

The judgment passed by the learned First Appellate Court is on appreciation of evidence available on the record. The agriculture tenancy normally is not on the basis of a written agreement. The conclusion is to be drawn by the Court on appreciation of evidence available on the file. In the present case, the land in dispute is more than 16 acres. The plaintiffs

have failed to produce any evidence on record to prove that they were in cultivating possession before 1984. No evidence has been produced to show that they had grown any crop and sold the same. Coupled with this, there is a statement of the plaintiff where he says that he has been cultivating the land with buffaloes which is highly improbable. Still further, the plaintiff-appellant submits that he has khassi and khurpa to cultivate the 16 acres of land which is not even possible. Khassi and khurpa is used for kitchen garden and not for agriculture land measuring 16 acres.

Still further, the defendants have proved on the file that they own a tractor. The defendants are not owner of any other land. If the defendants have purchased agriculture implements to cultivate the land, the obvious inference is that they are cultivating the land in possession. Still further, it is not in dispute that the plaintiff is resident of city whereas the defendants are residing in the same village where the property is situated.

Argument of learned counsel is that the revenue record does not support the case of the defendants cannot be accepted particularly in view of the fact that the entries in the revenue record have only presumption of truth. Such presumption is rebuttable. In the present case, those entries stand rebutted in view of the statement made by the plaintiff himself and other evidence available on the file.

Learned counsel for the appellants has submitted that by an interim order, the defendants were directed to pay 1/3rd batai. Learned counsel for the respondent has stated that the aforesaid amount has already been paid.

In view of what has been discussed above, this Court does not

find any good ground to interfere with the finding of fact arrived at by the learned First Appellate Court.

Appeal is dismissed.

All pending miscellaneous application shall stands disposed of in view of the aforesaid judgment.

09.01.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No