

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

RSA No.729 of 1993 (O & M)
Date of Decision:22.03.2018

Ram Asra and others

...Appellants

Versus

Kuldip Chand Muafidar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L. Sarin, Senior Advocate with
Mr. Ritesh Aggarwal, Advocate
for the appellants.

Ms. Bhavna Mehta, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit claiming possession from the defendants. It is the case of the plaintiff that originally Tulsi Ram was Muafidar and the owner of the suit land, which was inherited after his death by Dina Nath- father of the plaintiff and after death of Dina Nath, it is owned by the plaintiff. Plaintiff has further pleaded that there existed a Dharmsala of Vaishno Baragi. Plaintiff further pleaded that Dina Nath, his father had also executed a registered Will in his favour on 11.03.1980. It was further pleaded that Dina Nath became owner in possession of the suit land by virtue of Section 3 of the Punjab Occupancy Tenants (have vesting of Proprietary Rights) Act, 1982.

Defendants except defendants No.4 and 7 contested the suit. Defendants-appellants pleaded that the defendants are in possession of the suit property but their possession is not as a trespasser but they are tenant over the land as per writing dated 21.07.1969, whereby Dina Nath had leased out the suit property to them for a period of 99 years.

Both the Courts after appreciating the evidence available on the file, decreed the suit filed by the plaintiff after returning a finding that the lease for 99 years being not registered, is not admissible in evidence and lease for 99 years cannot be created by unregistered lease deed.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record. Learned counsel for the appellants has vehemently argued that the Courts below have wrongly recorded that the plaintiff is owner of the property. He has submitted that the plaintiff had claimed that his predecessors-in-interest were Muafidars and, therefore, they cannot be owner of the property. He has drawn the attention of the Court to the revenue record, where Central Government is recorded as owner of the property. He has further submitted that Muafidars were only entitled to collect the land revenue and, therefore, possession cannot be taken from the defendants-appellants by the plaintiff.

This Court has considered the submission. However, find no substance therein. Muafi is a grant given to the person for rendering service to the society. Muafidars are persons, who enjoy the possession on the basis of permission granted by the owner. In any case, the defendants-appellants, who have entered into possession of the property on the basis of a lease

deny the title of their landlord.

No doubt, there is some substance in the argument of learned counsel that the plaintiff cannot be declared owner of the property. However, the plaintiff is entitled to possession of the same being landlord.

Further the defendants-appellants are claiming their right only on the basis of an unregistered lease deed for a period of 99 years. Such lease deed is neither admissible in evidence nor permissible in law.

Both the Courts have recorded a concurrent finding that registered Will in favour of the plaintiff-appellant dated 11.03.1980 has been proved. Learned counsel for the appellants did not challenge this finding.

In view thereof, while upholding the judgments under challenge, it is ordered that the plaintiff would not be declared to be owner of the property. Plaintiff would be at liberty to file a separate suit claiming declaration that he is owner of the suit property.

With the slight modification referred to above, appeal is dismissed.

22.03.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No