

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

**RSA No.2180 of 1991 (O&M)
Date of Order: 15.11.2018**

**Mohd. Sharief (since deceased) through his LRs
and another**

..Appellants

Versus

**Nauniha Kishan (since deceased) through his LRs
and another**

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Sharma and
Mr. Ramesh Kumar Advocates,
for appellant no.1.

Mr. Vivek Singla, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court, decreeing the suit filed by the plaintiffs for possession of the property on the ground that the plaintiffs are licencees over the land.

Defendants contested the suit and pleaded that their father Mansab was owner as Sahabu left for Pakistan in the year 1943 and Sahabu was not related to Mansab. It was further claimed that the defendants are owners of the property being ancestral.

Learned trial court did not find the assertion of the defendants with regard to ownership to be correct and established, however, returned a finding that the defendants are tenants. Learned trial court went on to record that although defendants are in possession because of their relationship,

however, still the suit was dismissed.

Learned first appellate court after re-appreciating the evidence has reversed the judgment of the trial court. Learned first appellate court has noticed that in the rent column, revenue record from the very beginning shows that the possession of the father of the defendants was because of relationship with the owner and no rent was payable. Jamabandies for the years 1955-56, 1961-62, 1965-66, 1971-72, 1975-76 bear testament to that fact. Even oral evidence led by the defendants has been discussed by the court and found unreliable. It has further come in evidence that Sahabu, the original owner, had not migrated to Pakistan as pleaded by the defendants and was residing in village Gandrau (UP) till his death. Defendants have not cared to examine either Sahabu or Karmuddin. Still further the plaintiffs were found owners by the trial court which fact was not challenged before the first appellate court.

Hence, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

CM No.14272-C-2018

In view of the judgment passed above, the application is dismissed as not pressed as prayed for by learned counsel for the applicants.

CM No.8127-C-2018

Prayer in this application is for bringing on record the legal representatives of Badruddin-appellant no.2.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 2 of the

application are brought on record for the purpose of prosecuting this appeal only.

Amended memorandum of parties filed along with the application is taken on record.

November 15, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No