

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

RSA No.1073 of 1999 (O & M)
Date of Decision:08.05.2018

Zile Singh and others

...Appellants

Versus

Deva Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the appellants.

Mr. Ajay Chaudhary, Advocate and
Mr. Suresh Kumar Kaushik, Advocate for the respondent.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court. Plaintiffs-appellants filed a suit claiming superior right of pre-emption on the ground that they are in possession of the land as subject matter of sale by the owner to defendant No.1 – Deva Singh vide sale deed dated 05.07.1994. Suit was contested by the defendants and tenancy in favour of the plaintiffs was disputed.

Learned trial Court after appreciating the evidence available on the file, decreed the suit after recording a finding that the plaintiffs are proved to be in possession of the land as tenant over land measuring 3 kanals and 6 marlas comprised in Rectangle No.25, Khasra No.14/1.

Defendant-respondent filed the first appeal.

Learned First Appellate Court accepted the appeal on two grounds:- (i) plaintiff - Zile Singh has stated in his evidence that they are not paying batai/lease money to the plaintiff since 1994; (ii) the assertion of the plaintiff that they are paying batai/lease money to Khush Dayal, who is

general power of attorney holder of the original owner, is beyond pleadings;
(iii) copy of general power of attorney Ex.P-1 is in Urdu but translation whereof has not been filed.

In the considered opinion of this Court, following substantial questions of law arise in the present case:-

(i) whether non-payment of lease money results in termination of the tenancy or not?

(ii) whether evidence is required to be pleaded or not?

(iii) Whether Court can refuse to go into a document on the ground that Hindi translation thereof has not been filed without calling upon the parties to provide translation thereof?

At the time of admission of the appeal, this Court had also framed a question of law, which reads as under:-

(iv) Whether plaintiff/appellant who is tenant of land has got superior right of pre-emption?

Question:-(i) Whether non-payment of lease money results in termination of the tenancy?

Suit was instituted on 03.02.1995. It is positive assertion of the plaintiffs that they have been paying rent to Khush Dayal.

A look at Ex.P-2 proves that Khush Dayal died on 25.05.1989. On careful examination of Ex.P-1, general power of attorney dated 01.06.1956 proves that the owner had appointed Khush Dayal as his attorney along with two other relatives authorizing them to collect the rent and the rent was being collected by Khush Dayal, who died in the year 1989. It has come

in evidence that after death of Khush Dayal, his grand-son was collecting

rent. Merely because for some time the rent is not proved to be paid, relationship of the landlord and tenant does not come to an end. Agricultural tenancy can only be determined in accordance with the provisions of the Punjab Tenancy Act read with provisions of Punjab Security of Land Tenure Act. Hence, learned First Appellate Court erred in returning a finding that since payment of lease money from after 1994 is not proved. Tenancy has come to an end. Question No.1 is, therefore, answered in favour of the appellants.

Question No:-(ii) Whether evidence is required to be pleaded?

As per Order 6 Rule 2 of the Code of Civil Procedure only facts have to be pleaded and that also in a concise form. It is specifically provided under Order 6 Rule 2 of the Code of Civil Procedure that every pleading shall contain, and contain only, a statement of facts in a concise form on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which such facts are to be proved. Order 6 Rule 2 of the Code of Civil Procedure is extracted as under:-

“2. Pleading to state material facts and not evidence-(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.”

In the present case, the plaintiff had pleaded while filing the suit that they are tenants under Hari Kishan. The fact that the lease money is being paid or not was matter of evidence. In the present case, plaintiff led evidence to prove that they were paying lease money to Sh. Khush Dayal. Plaintiffs proved on file Ex.P-1, general power of attorney executed by the owner authorizing Khush Dayal and his others relatives to collect lease money from the tenants on behalf of owner. Therefore, the learned Court committed an error in returning a finding that the evidence led was beyond pleadings. Hence, question No.2 is also answered in favour of the appellants.

Question No:-(iii) Whether Court can refuse to go into a document on the ground that Hindi translation thereof has not been filed without calling upon the parties to provide translation thereof?

Question No:-(iv) Whether plaintiff/appellant who is tenant of land has got superior right of pre-emption?

If the document filed in the Court in evidence, is not in the language of the Court or the Court is not in a position to read that document, the Court must call upon the parties to file translation thereof in the language of the Court. However, the Court is not justified in refusing to examine the document and decline to take that document in consideration without calling upon the parties to produce translation thereof. General power of attorney executed by late Sh. Hari Kishan was produced on file as Ex.P-1 dated 01.06.1956. This Court has got this document examined from official translator attached to this Court. He read own Ex.P-1 wherein it is recorded

Dhar and Khush Dayal to manage his properties and represent them in the various litigations. He had also given power to his authorized agents to collect rent on his behalf. Hence, question No.3 and question No.4 are also answered in favour of the appellants.

In view of the aforesaid discussion made above, it is clear that the finding of the learned First Appellate Court is erroneous. Tenancy in favour of the appellants is proved from the copies of khasra girdawari Ex.P-3 and Ex.P-4. It is also proved from reading of Ex.P-4 that Zile Singh, one of the appellants was recorded as tenant on payment of 1/3rd batai (1/3rd share in the crop) from the year 1988. Zile Singh is further recorded as tenant in the subsequent khasra girdawari Ex.P-3, which covers crops from Sawani 89 to Hadi 1994. No evidence has been led by the respondent to rebut the presumption. Superior right of pre-emption of a tenant is not being disputed.

In view thereof, the questions of law as framed at the time of admission is also answered in favour of the appellant.

Hence, the judgment passed by the learned First Appellate Court is set aside and the judgment passed by the learned trial Court is restored.

Regular Second appeal is allowed.

08.05.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

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