

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

RSA No.4076 of 1999 (O & M)
Date of Decision:26.04.2018

Madan Lal

...Appellant

Versus

Vijay Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Chaudhary, Advocate and
Mr. Suresh Kumar Kaushik, Advocate
for the appellant.

Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while decreeing the suit for symbolic possession by way of pre-emption.

Plaintiffs-respondents filed a suit claiming superior right of pre-emption as available under Punjab Pre-emption Act, 1913. The superior right of pre-emption was claimed with regard to land measuring 12 kanals and 13 marlas sold to the appellant vide sale deed dated 05.07.1994 on the basis of tenancy. Both the Courts below after examining the evidence available on the file, have decreed the suit.

Learned counsel for the appellant while referring to the statement and oral evidence of the plaintiffs has submitted that the plaintiffs have stated in his evidence that the lease money was being paid to one Khush Dayal and thereafter to his grand-son after the death of Khush Dayal.

Learned counsel for the appellant built has argument that tenancy of the

plaintiffs is not proved as there is no evidence of payment of lease money to the owner.

This Court has considered the argument and with the able assistance of learned counsel for the parties gone through the record.

Ex.P-3 is jamabandi for the year 1988-89. Plaintiffs are recorded as tenant on 1/3rd batai (share in the produce). Same position continues in the jamabandi for the year 1993-94. Apart therefrom the plaintiffs have also produced on file copies of khasra girdawari proving their possession as a tenant. In the revenue record Ex.P-3 and P-4, the plaintiffs are recorded as tenants under Hari Kishan, who was the owner of the property. The sale deed dated 05.07.1994 has been executed by heirs of Hari Kishan through attorney. Payment of lease money to Khush Dayal would not in any manner improve the case of the appellant. Still further, in the connected appeal i.e. RSA-1073-1999, it is proved that Khush Dayal was attorney of owner Hari Kishan as proved from reading of the power of attorney dated 01.06.1956. Therefore, Khush Dayal was entitled to collect rent on behalf of the owner i.e. Hari Kishan. Appellant has not produced any document to prove that the plaintiffs were not tenants of Hari Kishan and after his death under LRs of Hari Kishan. The copies of jamabandi have a presumption of truth. The aforesaid presumption has not been rebutted by any evidence led by the appellant.

In view thereof, there is no scope for interference.

Regular second appeal is dismissed.

26.04.2018
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(ANIL KSHETARPAL)
JUDGE

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