

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

RSA No.5149 of 2012 (O & M)

Date of Decision:-08.02.2018

Surinder Kumar

...Appellant

Versus

Singh Ram (deceased) through LRs

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. I.S. Pabla, Advocate for
Mr. Kamal Joshi, Advocate
for the appellant.

Mr. Vivek Suri, Advocate
for respondents No.1 to 4.

AMIT RAWAL J.(Oral)

CM No.14372-C of 2012

For the reasons mentioned in the application supported by an affidavit, same is allowed and the delay of 145 days in filing the appeal is hereby condoned.

RSA No.5149 of 2012

The appellant-defendant is in appeal against the concurrent findings of fact whereby the suit filed by the Balharu (since deceased) represented by respondents-LRs for possession by way of pre-emption of the sale deed dated 11.3.2005 on deposit of Rs.44,750/- has been decreed

by both the Courts below.

Mr. I.S. Pabla, Advocate for Mr. Kamal Joshi, Advocate learned counsel appearing for the appellant submitted that the respondent-plaintiff did not comply with the requirements of law as per the law laid down by this Court for claiming the pre-emption as there has to be a specific pleading with regard to the date, month and tenancy. In fact it was a categoric case of the appellant-defendant that plaintiff was a co-sharer and this fact was admitted by one of the witnesses. The Court below has ignored the aforementioned evidence resulting into perversity. Even the vendee was not impleaded, therefore, the sale deed executed by the appellant-defendant in favour of the vendee could not have been pre-empted on deposit of the amount. In support of his contention, learned counsel has relied upon the ratio decidendi culled out by learned Single Bench of this Court in **Dalel Singh and another vs. Kalu and others 2015 (2) RCR (Civil) 682** wherein in paragraph 24 while going through the contents of the plaint this Court found that respondent-plaintiff did not plead with regard to the tenancy and non suited the respondent-plaintiff viz a viz the pre-emption right.

Per contra, Mr. Vivek Suri, Advocate learned counsel appearing for the respondents No.1 to 4-plaintiffs submits that there has been a categoric averment in the plaint with regard to the tenancy though denied by the defendants but the documentary evidence brought on record i.e. Jamabandi Ex.P2 and P3, Khasra Girdawari Ex.P4 proved the status of the Balharu the predecessor in interest of the respondent as a tenant. In

view of the provision of Sections 3 and 4 of the Punjab Pre-emption Act, 1930, every tenant has a right to pre-empt the land in case the landlord intends to sell the property to a third party. The concurrent findings of fact cannot be interfered until there is gross illegality which is conspicuously wanting in the present case, impels this Court to dismiss the appeal.

I have heard learned counsel for the parties, appraised the paper book, record of the trial Court and with their able assistance I am of the view that there is no force in the merit of the case.

The Jamabandis Ex.P2 and P3, Khasra Girdawaris Ex.P4, P5 and P6 irresistibly proved the status of Balharu as a tenant. In my view the appellant-defendant failed to discharge the onus disproving tenancy. Any admission in the cross-examination against the documentary evidence would be meaningless. There is no dispute with regard to the ratio decidendi culled out in **Dalel Singh's** case (supra) but this Court while going through the averments made in the plaint, found that the plaint did disclose the tenancy or the categorical pleadings in paragraph 3 of the plaint were not controverted in the written statement.

In view of the aforementioned I do not find that the findings rendered by both the Courts below not required to be interfered as the same are not suffering from any illegality and perversity.

Resultantly, the appeal stands dismissed.

During the course of hearing Mr. I.S. Pabla, Advocate learned counsel for the appellant raised the issued that the attorney given to his sons was only with regard to his land and not with regard to tenancy. I have

gone through the general power of attorney which empowered the agent to perform any part on behalf of appellant, therefore, the argument is wholly misplaced. Learned counsel for the appellant undertakes to deposit the cost of Rs.1500/- imposed by this Court vide order dated 3.5.2017, failing which the Registry is directed to list the matter for compliance.

February 08, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No