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

RSA-2548-2015

Date of decision : 17.01.2018

Mahabir Singh and others

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the appellants.

Mr. Rajbir Singh, AAG, Haryana.

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby the suit for declaration claiming to be owners in possession of the suit land measuring 154 kanals 12 marlas comprised in Khasra No.40/25, 41/20/2, 21, 22, 42/3, 8, 13, 14, 18, 21, 43/5, 6, 7, 13, 14, 17, 18, 22, 23, 24, 25, 63/2, 3, 4, 5 situated within the revenue estate of village Rajthal Tehsil Narnaund, District Hisar, has been dismissed by both the Courts below.

There was a categoric pleading that the suit land was previously owned by the Canal Department, Government of Haryana and an officer of the Canal Department had given the same to the grand father of the plaintiffs and had been in continuous possession for the last 60 years, therefore, be declared owners in view of the provisions of the Punjab Tenancy Act 1887. The Government had come out with a policy dated

20.04.1977 to dispose of the land by way of auction. Apprehending the dispossession, the appellants-plaintiffs instituted a Civil Writ Petition No.1547 of 1977 titled as “Bhagwan Singh V/s Haryana State”, which vide order dated 03.09.1985 (Ex.D6) was disposed of.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Varun Parkash, learned counsel appearing on behalf of the appellants-plaintiffs submits that this Court had not accepted the contention of the appellants-plaintiffs and dismissed the writ petition, but held that they cannot be dispossessed except in due course of law. There was no adjudication with regard to the petition having been not sufficed the requirement of the Punjab Tenancy Act as umpteen number of documents i.e. revenue record, in this regard, had been placed on record to claim the ownership by way of declaration. Even there was a specific pleading of the petitioner that he was a lessee. This Court in the aforementioned writ petition did not answer, whether the petitioner was a tenant or not. Both the Courts below have not referred to any other documents, whereby the plaintiffs-appellants had claimed the ownership by way of occupancy tenants, therefore, there is a gross illegality and perversity in the judgments and decrees, under challenge and the same are liable to be set aside.

Mr. Rajbir Singh, AAG, Haryana, submits that the concurrent findings of fact cannot be tinkered with until and unless, there is a gross illegality and perversity. He does not dispute the order dated 03.09.1985 (Ex.D6) passed in Civil Writ Petition No.1547 of 1977.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the focus of the Courts below in deciding the suit and the appeal was basically on the order dated 03.09.1985

(Ex.D-6). There was no reference to any other documents, whereby the plaintiffs-appellants had claimed the ownership on account of occupancy tenants. In other words, whether the appellants-plaintiffs had sufficed the requirement of the Punjab Tenancy Act or not. Though the trial Court had given passing reference to the documents in para Nos.6 and 7, but in my view, it is a fit case whereby the matter is required to be remitted to the Court below to decide the civil suit on the basis of all the documents and not in the manner and mode as has been done. The lower Appellate Court being the last Court of fact and law was also enjoined upon the obligation under Order 41 Rule 31 CPC to formulate the question qua the decision of the suit. Having failed to advert to the same, I am of the view that there is a gross illegality and perversity.

Resultantly, the judgments and decrees of the Courts below are hereby set aside and the matter is remanded to the trial Court to decide the matter i.e. Civil Suit No.250-C of 30.10.2006, afresh on the basis of the evidence already brought on record, much less, after affording the opportunity of hearing to the parties.

The parties through their counsel are directed to appear before the trial Court on 15.02.2018.

The appeal stands allowed.

17.01.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**

