

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

RSA-5910-2017 (O&M)

Date of Decision : 09.10.2018

Rajesh Kumar and others

..... Appellants

Versus

Banwari Lal (since deceased) Through LR's and others Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Amit Jain, Advocate
for the appellants.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgments of the courts below dismissing a suit filed by the appellants claiming that they had become occupancy tenants of the land in dispute.

The case of the appellants was that they had been in possession of the land as tenants for the last more than 50 years and were only paying rent equal to the land revenue and the subsequent entries showing them to be tenants on payment of 1/3rd of the produce (batai tihai) were illegal and they were entitled to become the owners of the land.

The case of the respondents on the other hand was that the appellants had always been on rent at the payment of 1/3rd produce and the entries showing them to be lessees on payment of the land revenue amount were in fact illegal and had been obtained by collusion.

The most important factor which has come up in this case to my mind is that earlier the respondents had filed an application for ejectment under Section 9 of the Punjab Security of Land Tenures Act on the ground that the appellants had not paid the rent amounting to Rs.48,000/- odd and the appellants had paid that amount.

Counsel for the appellants has argued that even a perusal of that order (which was placed on record by the respondents) would show that the appellants had paid that amount under threat of eviction. As per the counsel, this shows that the appellants had not accepted the rate of rent which was being claimed by the respondents.

Counsel for the appellants is not in a position to dispute that the amount had been paid without prejudice. Further the appellants admitted that they had tendered rent @ batai tihai to the respondents five to ten times and they never approached the revenue authorities for the correction of stray entries for the last so many years. The appellants did not even bring into evidence the pleadings of that case to show that they had ever disputed the rate of rent. In the circumstances, adverse inference has to be drawn against the appellants to the effect that they did not dispute the rate of rent and once that is so, they are not entitled to claim occupancy rights under Sections 5 & 8 of the Punjab Tenancy Act.

Resultantly, I am not persuaded that the findings of fact recorded by the courts below are either based on no evidence or based on such a perverse misreading of evidence so as to justify interference of this Court in second appeal.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

October 09, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No