

**RSA-881-1989 (O&M) AND
XOBJC-15-C-1989**

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

**RSA-881-1989 (O&M) AND
XOBJC-15-C-1989
Date of decision : 30.05.2019**

Notified Area Committee, Machhiwara and another

... Appellants

Versus

Sadhu Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Keshav Gupta, Advocate
for the appellants.

Mr. Rohit Nagpal, Advocate
for respondent No.1/cross-objector.

AMIT RAWAL, J. (ORAL)

The present regular second appeal and cross-objections, are directed against the concurrent findings of fact, whereby suit for declaration to be owner in possession of land measuring 10 marlas comprised in Khewat No.955, Khatauni No.1410, Khasra No.242, as per jamabandi for the year 1976-77, shown in red and yellow in the site plan situated at Machhiwara, Tehsil Samrala, District Ludhiana, comprising three shops shown in yellow colour in possession of defendant Nos.3 to 5 as tenants under plaintiffs, vacant site and shed shown in red in the site plan and for possession, has been dismissed by trial Court and affirmed in appeal.

It was alleged that the aforementioned land was, vide resolution

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dated 24.08.1970, by erstwhile Panchayat, leased out to defendant Nos.1 and 2. Period of lease was 10 years on a monthly rent of ₹40/-. There was relationship of landlord and tenant. It was agreed that defendant Nos.1 and 2, could construct the shop on the site and after expiry of the lease period, would hand over the possession to the Gram Panchayat. Defendant No.2, after construction, leased out the same to defendant Nos.3 to 5 and remaining land was kept vacant and a tin shed was constructed thereon. On expiry of period of lease on 24.08.1980, defendant Nos.3 to 5 were bound to deliver the possession, but did not do so and therefore, the suit, aforementioned, was filed. It was alleged that Sadhu Ram/defendant No.1, purchased 10 marlas of land, comprising of shop No.520 to 522 from Custodian Department being Evacuee Property, thus, such claim was illegal and void.

Stand of defendant No.1, in the written statement, was that nature of land of Khasra No.242 was *abadi deh* and evacuee. It was purchased from Custodian Department, vide sale deed dated 18.06.1981, registered on 23.06.1981 and the Gram Panchayat had sold to defendant Nos.1 & 2, being its owner with a permission to construct a building and pay nominal rent of ₹40/-. There was no relationship of landlord and tenant. The shops were let out by defendant Nos.1 & 2 to defendant Nos.3 to 5. Boundary wall on back portion was built upto the plinth level. Defendant Nos.3, 4 and 5, also filed the suit in collusion with the plaintiffs, but the application under Order 1 Rule 10 of CPC was filed. Suit, later on, was withdrawn. Ejectment proceedings were filed against defendant Nos.3 to 5, which were pending and claimed ownership of the property.

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Defendant No.2 also taken the similar plea as taken by defendant No.1.

Defendant Nos.3 to 5 filed the joint statement and alleged that defendant No.1 had already surrendered his rights to the Notified Area Committee and asked them to pay rent to the plaintiffs, but did not deny factum of filing of the suit for injunction.

Since parties were at variance, trial Court framed following issues:-

- 1. Whether the plaintiff committee is owner of the property in dispute? OPP*
- 2. Whether the property in dispute vested in the custodian and the same was purchased by defendant No.1, vide sale deed dated 18.6.81, registered on 23.6.81? OPD 1 and 2.*
- 3. Whether defendant Nos.1 and 2 are estopped from denying the title of the Gram Panchayat, Predecessor-in-interest of the plaintiff Committee? OPP*
- 4. Whether the defendant Nos.3 to 5 attorned their tenancy in favour of plaintiff Committee, if so to what effect? OPP*
- 5. Whether the suit is not maintainable in the present form? OPD*
- 6. Whether defendant No.2 relinquished his rights in the property in dispute in favour of the defendant No.1? If so, to what effect? OPD*
- 7. Whether this Court has no jurisdiction to try the present suit? OPD*
- 8. Whether suit has been filed in collusion with the defendant Nos.3 to 5? OPD*
- 9. Whether plaintiffs are bared by their act and conduct for filing the present suit? OPD*
- 10. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP*

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11.Relief.

Both the parties led extensive evidence in support of their evidences.

The trial Court, noticing the evidence on record, did not accept the contentions of the defendants as owners, in the absence of any counter-claim, but also rejected the documents of the plaintiffs and dismissed the suit. The appeal taken before the lower Appellate Court was also dismissed.

Mr. Keshav Gupta, learned counsel appearing on behalf of the appellants submitted that umpteen number of documents established ownership of the plaintiffs. Courts below ought to have granted declaration of ownership, at the best, could have relegated the plaintiffs to initiate ejectment proceedings, instead of dismissal the suit *in toto*. In fact, documents, established, the ownership, but relied upon jamabandi for the year 1976-77 (Ex.P25). All other documentary evidence established/proved it not to be evacuee property, but belonged to erstwhile Gram Panchayat. There was relationship of landlord and tenant. Since the provisions of Rent Act did not apply, therefore, relief of possession was sought. Viz-a-viz, maintainability of suit, it was submitted that once the issue with regard to the maintainability was not argued by the defendants, the Courts below cannot deal with the same as deemed to have been given up. In support of contentions, reliance has been laid down to *ratio decidendi* culled out by this Court in **“Gram Panchayat, Ladhuwas Ahir V/s State of Haryana and others” 2012 (3) PLR 7.**

Mr. Rohit Nagpal, learned counsel appearing on behalf of the respondents submitted that the lower Appellate Court ought not to have

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given the findings on the ownership as certificate of the sale deed, placed on record, established their ownership. There was no occasion for the Courts below to render the findings, once the plaintiffs failed to discharge the onus.

I have heard learned counsel for parties, appraised paper book as well as the records of the Courts below and of view that there is no force and merit in the appeal as well as cross-objections, for, a person, who asserts the right in property claiming declaration with consequential relief of possession, is required to prove the ownership by direct and cogent evidence. The pleaded case of plaintiffs is that the property was leased out. Assuming for an argument sake, though not admitting, there was no occasion to claim ownership as remedy was to seek ejectment, but since the parties were alive to the controversy, in view of framing of issues as the defendants also asserted right in the property by virtue of sale deed, the Court below was called upon to render the said findings. Both the parties failed to place on record the material to establish their ownership. The jamabandi for year 1976-77 (Ex.P25) only reflected as *abadi deh*. No alleged lease deed to establish the assertions with regard to the permission to defendant No.1, to raise the construction has seen light of the day. In my view, both parties failed to discharge onus in terms of their respective stand and defence. No direct and cogent evidence before and subsequent jamabandis, have been placed on record to affirm that it was consistently *abadi deh* land, in such circumstances, *ratio decidendi* culled out in **Gram Panchayat, Ladhuwas Ahir's case (supra)** would not be applicable.

The argument of Mr. Keshav Gupta, with regard to the

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maintainability of the suit is not sustainable as the same cannot prevent this Court to form an opinion, therefore, must fail.

It is also a matter of record that ejectment proceedings filed against defendant Nos.3 to 5, by defendant No.1, were allowed.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Keshav Gupta, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal as well as cross-objection are dismissed.

30.05.2019
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**