

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.42 of 1989 (O&M)

Date of Decision: April 12, 2019

Khushala

...Appellant

Versus

Surinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. K.S.Cheema, Advocate,
for the appellant.

Mr. S.S.Sodhi, Advocate for
Mr. A.S.Kalra, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of fact, whereby the suit the appellant-plaintiff for declaration claiming possessory title to the extent of 2/3rd share of total land measuring 117 kanals 15 marlas, i.e., 78 kanals 10 marlas comprising of Khewat No.290, Khatauni No.338, Rect. No.7, Khasra Nos.1635 and 1637, situated in Village Siprian bearing hadbast No.367, Police Station Hajipur, Tehsil Dasuya, District Hoshiarpur with consequential relief of permanent injunction seeking restraint against the defendants from cutting and removing the trees and also changing the nature more than 1/3rd share, has been dismissed.

It was alleged that one Badhwa was the original tenant of land measuring 117 kanals 15 marlas. He had three sons, namely, Khushala, Harnama and Waryama. Waryama had two sons Surinder Singh and Ramji

Dass (defendant Nos.1 and 2), whereas Khushala is the plaintiff. The dispute is regarding the share of Harnama, who died issueless in the year 1982. Harnama, during his life time, executed a registered Will dated 22.09.1982, but the defendants in collusion with the revenue officials, obtained wrong and fictitious entries. Plaintiff had been in peaceful possession and enjoyment of the property, whereas defendant Nos.3 to 7 were stated to be proforma.

Defendant Nos.1 and 2 contested the suit by raising preliminary objections qua jurisdiction of the civil court and suppression of material facts, but did not deny the death of Badhawa 15 years back. They denied the possession of the plaintiff. It was alleged that Harnama did not execute any Will and in case it was proved, the same was result of fraud and misrepresentation. Application of the plaintiff for correction of the entries was rejected by the Assistant Collector IInd Grade, Telwara and the appeal filed against thereof was also dismissed by the Sub Divisional Officer (Civil), Dasuya.

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

- “1. Whether deceased Harnama executed a valid will on 22.9.82 in favour of the plaintiff, if so, its effect? OPP*
- 2. Whether the plaintiff is in possession of the suit land? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the civil court has no jurisdiction to try this suit as alleged? OPD*
- 5. Whether the plaintiff is entitled to the declaration and injunction prayed for? OPP*
- 6. Relief.”*

Plaintiff, in support of the evidence, examined five witnesses, and brought on record certified copy of the Will Ex.P1, whereas the defendants examined eight witnesses and produced on record certain documents.

The trial Court, on the basis of the evidence, dismissed the suit by disbelieving the Will and the witnesses, but did not opine regarding the inheritance of the tenancy since the defendants had also placed on record joint account form Ex.D1 through the testimony of PW-5 Mohinder Singh, Clerk in the New Bank of India and also examined Shankar Dutt DW-3 and Kartar Chand DW-4, who corroborated the statement of DW-1 Kashmir Singh regarding the possession of land belonging to the share of Harnama.

During the pendency of the appeal before the Lower Appellate Court, an application for amendment of the plaint was submitted by the plaintiff for incorporating the relief of joint possession, but the appeal and the application both have been dismissed. No reason either by the trial Court or the Lower Appellate Court for non-suiting the appellant was assigned by applying the provisions of Section 8(b) of the Punjab Security of Land Tenures Act, 1953 (for short, 1953 Act).

Mr. K.S.Cheema, learned counsel appearing on behalf of the appellant-plaintiff submitted that the concurrent findings of fact and law arrived at by the courts below are totally erroneous and perverse, for, the provisions of 1953 Act would not be applicable as the same deal for the purpose of determination of the land having declared surplus at the hands of the landlord and the tenant, i.e., permissible area, whereas the parties to the lis were and would have been governed by the provisions of Section 4(7) of the Punjab Tenancy Act, 1887 which defines the landlord and tenant

including their predecessor-in-interest and successor-in-interest. It is settled law that the tenancy is inheritable and for the purpose of possessory rights, reliance can be made to the Schedule of Class-II heirs attached with Section 8 of the Hindu Succession Act. Even the witnesses of the Will have been coherent and consistent and spoke about the compliance of Section 63(c) of the Indian Succession Act and, thus, urged this Court for decretal of the suit.

Since the application seeking amendment of the plaint was rejected, vide Misc.Application bearing No.684-C of 1989 indulgence of this Court has been sought for amendment of the plaint by incorporating in the end of heading of the plaint, in the end of paras No.1, 3, 9, 13 and 14.

Mr. S.S.Sodhi Advocate for Mr. A.S.Kalra, learned counsel for the respondents submitted that the judgments and decrees of the courts below do not suffer from illegality or perversity. The tenancy in such type of matters qua possessory rights is not inheritable. The Will was surrounded by suspicious circumstances even if registered. The witnesses did not depose that they had signed under the directions of the testator. The amendment sought will change the nature of the suit, which is not permissible as valuable right had accrued in favour of his clients.

I have heard the learned counsel for the parties, appraised the paper book, records of the courts below and of the view that the following Substantial Question of Law arises for determination by this Court:-

“Whether the judgments and decrees of the courts below suffer from illegality and perversity by applying the provisions of Section 8(2)(b) of 1953 Act or the provisions of Section 4(7) of the Punjab Tenancy Act would apply?”

The relationship between the parties being the legal representatives of Badhawa are not in dispute. The point to be pondered upon by this Court is whether Harnama, even if, had not executed the Will, the other brother Khushala would not precedent to succeed his possessory rights vis-a-vis the defendants No.1 and 2 (sons of Waryama, the other brother). Reliance can be laid to the Schedule dealing with Class-II heirs where brothers are at Sr.No.II and brother's sons at Sr.No.IV.

The plaintiff though had not been successful in proving the execution of the Will as the witnesses did not depose strictly in terms of the provisions of Section 63(c) of the Indian Succession Act, but in my view, has rightly been discarded by both the courts below and in view of the provisions of the Hindu Succession Act, credence would be of the plaintiff.

The second question, which requires to be answered, is whether the possessory rights are inheritable. In other words, provisions of Section 53 of 1887 Act would apply, for, the object of the Act was to determine the permissible area at the hands of the landlord and as well as the occupant tenants and the procedure for allotment after declaration of the land as surplus. In order to determine the relationship of landlord and tenant, it would be apt to reproduce sub -section (7) of Section 4 of 1887 Act. The same reads thus:-

“tenant” and “landlord” include the predecessors and successors-in-interest of a tenant and landlord, respectively.”

As per the general rule, in case of death of a tenant, his successors are entitled to inherit the tenancy, otherwise it would not come to an end or redetermination. It is not the case of title as defendant Nos.3 to 5, original landlords, did not choose to contest the suit. It is in this backdrop of the matter, the wisdom drawn upon the plaintiff to move an application at

appellate stage for claiming joint possession in view of the fact that the question is only with regard to estate of Harnama, one of the son of Badhawa. It is a necessary corollary which ought to have been allowed by the Lower Appellate Court. Be that as it may, since similar application has been filed and no independent evidence is required to be led, the following amendment is permitted to be incorporated:-

In the end of the heading of the plaint

“In the alternative the suit for joint possession of the land in dispute i.e. 1/3 share left by Harnama.”

In the end of para 1

“being occupancy tenant of Amar Singh father of defendant Nos.3 to 6.”

In the end of Para 3

leaving behind the plaintiff appellant as the only heir under Hindu Law.”

In the end of Para No.9

“If at all it is found that the plaintiff is not in possession of the 1/3 share of Harnama then the suit is for Joint possession of 1/3rd share of tenancy rights left by Harnama.”

In the end of Para No.13.

“The value of the suit for the purpose of court-fee and jurisdiction for the relief of joint possession is Rs.84/- i.e. one years rent. The court-fee on the higher value has been fixed.”

In the end of para No.14.

“And in the alternative decree for joint possession of the 1/3rd share of the land detailed in the heading of the plaint be passed in favour of plaintiff and against the defendants.”

In view of the cumulative effect of the reasoning and the amendment caused in the plaint, the suit is liable to be decreed.

Accordingly, the judgments and decrees of the courts below are set-aside.

The Substantial Question of Law is answered in favour of the appellant-plaintiff. Suit of the plaintiff is decreed with a mandate to declare him to be owner to the extent of the share which he had claimed and as well as in joint possession with the other co-sharers.

Appeal stands allowed.

April 12, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No