

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

RSA-2869-1994(O&M)

Date of decision:-3.9.2019

Budh Ram and others

...Appellants

Versus

Nand Ram and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.C.B.Goel, Advocate
for the appellants.

Mr.Jai Vir Yadav, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Budh Ram son of Ram Narain @ Ramrattan alongwith Subhash, Vijay Pal, Jiwan Ram, Rajinder – minor sons of Sh.Tirkha through their mother Smt.Sarti, all residents of village Khorma, Tehsil Narnaul, District

Mahendergarh had brought a suit for grant of permanent injunction against the defendants – Sh.Nand Ram and Sh.Mange Ram sons of Sh.Sheochand, resident of village Chinalia, Tehsil Narnaul, District Mahendergarh on the averments that they are in possession of the suit land, which the defendants have purchased vide registered sale deed dated 28.7.1986; earlier the plaintiffs were in possession of the suit land as non-occupancy tenants under the previous landlords and after purchase of land by the defendants, they have become non-occupancy tenants under the defendants; that when the defendants tried to interfere in possession of the plaintiffs over the suit land not listening to their requests to desist from doing so, feeling aggrieved the plaintiffs had filed the suit in hand.

On notice, the defendants appeared and filed written statement contesting the suit contending that plaintiffs are not in possession of the suit land as non-occupancy tenants; that this land has been purchased by defendants vide sale deed dated 28.7.1986 for a sum of Rs.30,000/-; that plaintiff No.1 Budh Ram had delivered the possession of the suit land to defendant No.2 Mange Ram in the year 1985 while entering into an agreement for mortgage of the suit land in his favour for a sum of Rs.3,000/- and the defendants are in possession of the suit land ever since; now they have purchased that land from its owners as detailed above, resultantly their possession is now as that of owners. The defendants raised legal objections that

the plaintiffs are estopped by their own act and conduct from filing the suit and the suit as brought by them is not maintainable.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are in possession of suit property as tenants? OPP.
2. Whether the plaintiffs relinquished possession as detailed in paragraph No.2 of the written statement? OPD.
3. Whether Smt.Sarti has got no right to institute the suit on behalf of plaintiffs No.2 to 5? OPD.
4. Whether the plaintiffs are estopped from filing the present suit by their act and conduct? OPD.
5. Relief.

The parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 7.10.1991 restrained the defendants from dispossessing the plaintiffs No.2 to 5 from the suit property, except in due course of law, whereas claim of plaintiff No.1 Budh Ram was rejected as he was not found to be in possession of the suit property.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge,

Narnaul, which was assigned to learned Additional District Judge, Narnaul, who vide judgment dated 29.3.1994 accepted the appeal, set aside the judgment and decree passed by the trial Court, resultantly, suit filed by the plaintiffs was dismissed. The objection petition filed by Budh Ram was also dismissed.

Now it was turn of the plaintiffs to feel aggrieved and they have filed the present regular second appeal before this Court, notice of which was issued and the respondents-defendants have appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The judgment passed by the trial Court was not sustainable since it was based upon misappraisal of evidence and wrong interpretation of law. That wrong was set right by Additional District Judge, Narnaul, who by correct analysis of factual and legal position had come to the conclusion that though Budh Ram and his brother Tirkha predecessor-in-interest of plaintiffs No.2 to 5 were joint tenants, however as Tirkha had expired in the year 1983 around, he could not have possibly remained in joint possession of land with his brother Budh Ram and it was Budh Ram, who came in exclusive possession of the land and he had handed over possession of that land to Mange Ram defendant on 4.3.1986 after receiving Rs.2,880/- for the purpose of mortgaging of the land vide agreement Ex.D1 and

further as it transpired from statement of Smt.Sarti, Budh Ram was in exclusive possession of the land in dispute and Tirkha never cultivated it. The Assistant Collector IInd Grade, Narnaul had found defendants to be in possession of suit land since Kharif 1985 and dismissed the application moved by the plaintiffs for correction of khasra girdawari, though that order was challenged in appeal but the appeal was rejected by Collector vide order dated 19.10.1989; a revision petition filed by the plaintiffs against order of the Collector but the same was withdrawn by them on 31.7.1992, meaning thereby, that they had accepted the order vide which defendants had been found to be in possession. The observations by the trial Court that after death of their father Tirkha, plaintiffs No.2 to 5 are presumed to have taken possession of the suit land as non-occupancy tenants was found to be incorrect in view of the fact that even Smt.Sarti mother of such plaintiffs getting her statement recorded had nowhere alleged that Tirkha ever cultivated the land in dispute and minor plaintiffs could not possibly cultivate it after death of their father Tirkha. Similarly, as it transpired Smt.Sarti herself had not cultivated the land in dispute and Budh Ram was in exclusive possession. The conclusion arrived at by learned Additional District Judge, Narnaul is proper and appropriate based upon sound reasoning and does not call for taking of any different view.

No substantial question of law arises in this appeal.

Finding not merit in the appeal, the same stands dismissed.

3.9.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No