

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

Date of decision: 27.02.2019

1. RSA No.907 of 2006 (O&M)

Gurdial Singh

..... Appellant

Versus

Sucha Singh and another

..... Respondents

2. CR No.4547 of 2006 (O&M)

Gurdial Singh

..... Petitioner

Versus

Sucha Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sanjiv Gupta, Advocate
for the appellant/petitioner (in both cases).

Mr. Rajinder Goyal, Advocate
for respondent No.1. (in both cases).

ANIL KSHETARPAL, J. (ORAL)

CM-3104-CII-2019 in CR-4547-2006

Prayer in the application is for impleading legal heirs of appellant/petitioner-Gurdial Singh.

Application is allowed subject to just exceptions. The legal heirs of appellant/petitioner-Gurdial Singh mentioned in the application are ordered to be brought on record for the purpose of prosecuting the appeal only.

Main Cases

Vide this judgment, RSA No.907 of 2006 and CR No.4547 of 2006 shall stand disposed of as both are connected.

Defendant No.2-appellant is in the regular second appeal against

the concurrent finding of fact arrived at by the Courts below while decreeing the suit for possession against defendant No.2 as relief against defendant No.1 was given up.

The plaintiff claiming to be owner had pleaded that defendant No.2 is in unauthorized possession of the property. Defendant No.2 defended the case by pleading that apart from the land comprised in Rect. No.9, Killa No.24 which is in possession of defendant No.1, he is in possession as tenant on payment of 1/4th 'batai' i.e. share in the produce. Learned trial Court as well as First Appellate Court have decreed the suit filed by the plaintiff after recording a finding that defendant No.2-appellant herein is in unauthorized possession and he has failed to prove his tenancy. During the pendency of the first appeal, an application for additional evidence was filed under Order 41 Rule 27, CPC through which defendant No.2 sought to be produce the judgment and decree declaring someone else to be owner of the property. Learned counsel has stated that the aforesaid application has not been decided. This fact is not disputed by learned counsel for the plaintiff, however, he submits that such additional evidence even if taken into consideration, would not affect the result of the suit. He submitted that such transfer does not affect the rights of defendant No.2.

There is substance in the argument of learned counsel for the respondent-plaintiff because defendant is to prove his plea of tenancy. Even before this Court, an application for additional evidence has been moved in order to prove that he is tenant. First Jamabandi is for the year 1976-77 which has been sought to be produced. In the aforesaid Jamabandi, the entry against possession of defendant No.2-appellant is "no rent being relative". The next Jamabandi is for the year 1981-82 wherein in column No.9, the entry is "no rent because being relative", however, there is addition that it is on payment of

1/3rd share in the crop. Another Jamabandi has been sought to be produced i.e. Jamabandi for the year 1986-87 wherein again there is no entry in the column of rent. Next Jamabandi for the year 1991-92. In the aforesaid Jamabandi also, there is no entry of any rent. The Jamabandi for the year 1996-97 again there is no entry of rent.

The tenancy is always a bilateral contract between the parties. There is no written contract. The defendant no doubt has pleaded that he is in possession as a tenant, however, he claims that he is in possession on 1/4th share of the crop whereas only one entry shows that he is tenant on 1/3rd share of the crop. Other entries in the Jamabandies do not prove that he was tenant. Still further, there is no evidence that he ever paid any rent to the plaintiff or his successor. In view thereof, even if the documents sought to be produced in additional evidence are taken into consideration, no ground to interfere with the concurrent finding of fact is made out.

Hence, the appeal is dismissed.

This revision petition (CR No.4547 of 2006) has been filed against the order passed by the Executing Court issuing warrants of possession. It has been pointed out by learned counsel for the respondent that in execution of warrants of possession, the possession has been taken on 08.03.2006. In any case, once the appeal has been dismissed, no error can be found in the order passed by the Executing Court.

Revision petition is dismissed.

The pending miscellaneous applications, if any in both the cases, shall stand disposed of accordingly.

27.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No