

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 196 of 2011 (O&M)
Date of Decision:3.10.2019**

Desh Ram @ Desh Raj and others

---Appellants

vs.

Kedar Singh @ Anoop Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Surinder Garg, Advocate
for the appellants

Mr. Sanjay Mittal, Advocate
for respondent No. 6

Rekha Mittal, J.

Challenge in the present appeal has been directed against decrees and judgments passed by the courts whereby claim of the appellants-plaintiffs qua ownership of suit land being occupancy tenants, has been dismissed.

The facts relevant for disposal of present appeal are that respondents-defendants are recorded as owners in the revenue record qua suit land situated in village Jharli, Tehsil and District Jhajjar. It is averred by the plaintiffs-appellants that they are cultivating the suit land as occupancy tenants for more than two generations at a nominal rent of Rs. 1/- per kanal per year. They are in possession of land for the past more than 50 years and rent has not been enhanced. They claimed to have become owner

in possession of the suit land and sought permanent injunction restraining the respondents from interfering into their possession of suit land.

Defendant No. 1 filed the written statement and controverted the allegations that land was given to the plaintiffs by the defendant for the purpose of cultivation and no promise was made by the defendant that they will not eject the plaintiffs from the suit land. The plaintiffs are not occupancy tenants of the suit property, therefore, question of filing of suit for ejectment against them does not arise. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

Defendant No. 6 filed his separate written statement and claimed that he purchased 1/4th share of Nirmal Kumar and Kedar Nath vide registered sale deed dated 7.4.2000 for Rs. 1,25,000/-. He also purchased 1/12th share of Kedar Nath vide sale deed dated 9.4.2004. Mutation Nos. 1474 and 1508 were sanctioned in his favour on the basis of aforesaid sales. He is owner in possession of 10 kanals of land. He was tenant of 1/4th share in the suit property as per decree dated 21.7.1999 passed in Civil Suit No. RBT-1452 by the Civil Judge, Jhajjar. He denied the allegations that appellants are occupancy tenants of the suit land or can assert their claim of ownership and possession of the land in dispute.

The trial court framed issues, reproduced in para 4 of the judgment of said court. The evidence adduced by the parties finds reference in para 5 of the judgment.

The trial court, in view of rival submissions made by counsel for the parties and materials on record, negatived plea of the appellants to be declared as owners in possession of suit land or their entitlement to

discretionary relief of injunction and eventually the suit was dismissed.

The Court in Appeal affirmed findings of the trial court rejecting claim of the appellants of their ownership of suit land being occupancy tenants but findings of the trial court on issues No. 2 and 4 were modified with the observations that appellants are in cultivating possession of some part of the suit land as per the revenue record and this fact is also admitted by defendant No. 6 in previous suit No. RBT-1452 of 1994 qua the suit land.

Counsel for the appellants, at the outset, would inform that the instant appeal has been preferred by the plaintiffs/appellants to assert their claim of ownership being occupancy tenants of the suit land. It is argued that since the appellants-plaintiffs are recorded to be in possession of the suit land since the year 1966-67 and there is entry in column No. 9 of jamabandi with regard to payment of rent @ Rs. 1 per kanal per year coupled with their plea that they were put in possession of the suit land with a promise not to evict them, they satisfy the ingredients of Section 5 of the Punjab Tenancy Act, 1887 (in short “the Act”) and are entitle to be declared as owners of the suit land.

Counsel representing respondent No. 6, on the contrary, has supported consistent findings recorded by the courts dismissing claim of the appellants with regard to ownership of the land in dispute. It is further argued that decree and judgment dated 21.7.1999 passed in Civil Suit No. RBT-1452 of 1994 filed by respondent No. 6 in which the appellants-plaintiffs were also impleaded as parties is binding against the appellants

wherein respondent No. 6 has been declared to be tenant in the suit land to the extent of 1/4th share.

I have heard counsel for the parties, perused the paper book and records.

Section 5 of the Act deals with tenants having right of occupancy. A relevant extract therefrom, reads as follows:-

1. A tenant-

(a) who at the commencement of this Act has,for more than two generations in the male line of descent through a grand-father or grand-uncle and for a period of not less than twenty years, been occupying land paying no rent therefor beyond the amount of land-revenue thereof and the rates and cesses for time being chargeable thereon, or

(b) xxx xxx xxx

(c) xxx xxx

(d) xxx xxx xx

(2) If a tenant proves hat he has continuously occupied land for thirty years and paid no rent therefore beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (I).”

The appellants raised a plea that they are in possession of the suit land on payment of nominal rent. No such plea has been raised by them that rent paid/payable by them is not beyond the amount of land revenue and the rates and cesses for the time being chargeable on the land in question.

Counsel for the appellants, in response to a query, would fairly concede that no such evidence has been adduced by the appellants to satisfy the requirements of Sub Section 2 of Section 5 of the Act if rate of rent

reflected in column No. 9 of the jamabandis is less than the amount of land revenue and rates and cessess chargeable on the land in question. That being so, the appellants cannot claim right of occupancy in view of the provisions of Section 5 of the Act nor can they be heard to say that they have become owners of the suit land having right of occupancy tenancy. The courts did not advert to this vital aspect of the matter while dealing with the question of entitlement or otherwise of the appellants to be declared as owners of the suit land. In view of the above, this court need not to dilate on the issues with regard to period of possession, payment or non-payment of rent or the appellants proving or non-proving that possession was delivered to them by the land owners with a promise not to eject them from the disputed land.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

3.10.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No