

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA-330 of 2012(O&M)
Date of Order:21.01.2019

Manohar Lal ..Appellant

Versus

Sagiri ..Respondent

(2) RSA-371 of 2012(O&M)

Manohar Lal ..Appellant

Versus

Sagiri and others ..Respondents

(3) RSA-4244 of 2012(O&M)

Sagiri ..Appellant

Versus

Manohar Lal and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Verma, Advocate,
for the appellant (s).

Mr. Jitender S. Chahal, Advocate,
for the respondent(s)

ANIL KSHETARPAL, J (Oral)

By this order, Regular Second Appeal Nos.330, 371 and 4244
of 2012 shall stand disposed of.

RSA No.330 of 2012

Plaintiff-appellant is in the regular second appeal against the
concurrent findings of fact arrived at by both the courts below.

Plaintiff filed the present suit seeking superior right of pre-emption under the Punjab Preemption Act, 1913 on the basis that he is a tenant on the land in dispute, which was subject matter of sale dated 05.10.2005.

Both the Courts on appreciation of the evidence have found that the plaintiff has failed to prove tenancy on the land in dispute.

Plaintiff has relied upon a jamabandi for the year 1988-89 wherein he has been recorded in possession as “Gair Marusi Doyam”. The meaning of the aforesaid entry is clear that the plaintiff was tenant under the tenant (sub-tenant). There is neither any pleading nor any evidence to the fact that there was any contract of tenancy between the owner and the plaintiff and the plaintiff ever paid any rent to the owner. As per Section 15 of the Punjab Preemption Act 1913, the plaintiff in a suit for pre-emption claiming superior right of pre-emption on the ground that he is tenant, is required to prove that he holds the land under tenancy of the vendor which is missing in the present case. Apart from the reasons which have been recorded by the courts below, once this fundamental fact has neither been pleaded nor proved, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

RSA No.371 of 2012 &
RSA No.4244 of 2012

In RSA No.371 of 2012, same Manohar Lal has challenged the finding that in the injunction suit, he has not been held to be tenant. Whereas in RSA No.4244 of 2012, Sagiri who is purchaser through sale deed dated 05.10.2005 has challenged the decree passed by the learned first appellate court granted injunction against forcible dispossession.

Learned first appellate court while reversing the judgment of

the trial court has held that since Sagiri has not found to be in possession as she admitted that after the death of her father, the land came in possession of Lilu for 2 years and thereafter in possession of Taj Mohammad, hence, Sagiri was never in possession.

Learned first appellate court has totally misdirected itself. The moot question is “whether the plaintiff-appellant is in possession as a tenant or otherwise?

The question of tenancy has already been decided by the court while dismissing the appeal i.e. RSA No.330 of 2012.

As regards possession, the finding has been returned only on the basis of entry in the revenue record. The entry in the revenue record is not in accordance with the case set up by Manohar Lal, plaintiff-appellant. Manohar Lal-appellant had claimed tenancy under the vendor i.e. Diwan Chand. However, the revenue record proves that he was only a sub-tenant i.e. tenant under the tenant.

Manohar Lal neither claim that he was inducted as a tenant by Asmail nor thereafter by Sagiri. No doubt, some entry has been made showing Manohar Lal to be in possession of the property but in the considered view of this court on the basis of entry only, injunction cannot be granted unless plaintiff establishes through leading proper evidence that he is in possession of the property and continues as such. Tenancy is a contract between the parties. Before a person is held to be tenant, some evidence is required to be led to prove that since when the tenant came in possession, what were the terms of the tenancy even though it may be oral. In the present case aforesaid evidence is totally missing.

In view thereof, the judgment passed by the learned first

appellate court reversing the judgment of the trial court is also erroneous.
Accordingly Regular Second Appeal No.371 of 2012 is dismissed, whereas
Regular Second Appeal No.4244 of 2012 is allowed.

January 21, 2019
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(ANIL KSHETARPAL)
JUDGE

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