

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

RSA No.5433 of 2012 (O&M)

Date of decision: 06.03.2019

Dharambir Singh etc.

..... Appellants

Versus

Rajinder Kumar etc.

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate
for the appellants.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Parunjeet Singh, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Plaintiff through his legal heirs is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff (late Sh. Shish Ram) had filed a suit on the ground that he is lessee in possession on the basis of various registered lease deeds executed by Sukh Lal for a period of 95 years on 31.03.1999. The defendants be restrained from interfering in his possession. The plaintiff had also pleaded that a sale deed dated 31.03.1989 was also executed by Sukh Lal in his favour.

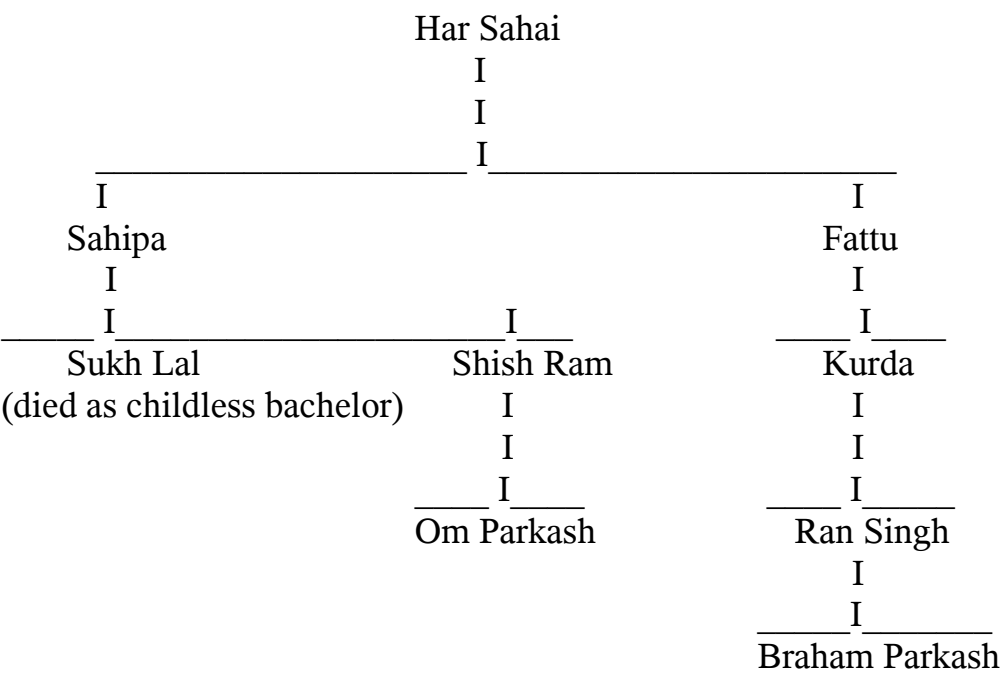
The defendants contested the suit and disputed the execution of the two lease deeds in favour of the plaintiff.

Both the Courts after examining the evidence have found that

Sukh Lal was not the owner major part of the suit land on the day the

alleged lease deeds were executed. In this respect, this Court has already dealt with the question of ownership while deciding RSA Nos.673 and 960 of 2013 which are being decided on the same day.

To understand the inter se relationship between the parties, a small pedigree table shall be convenient which is drawn as under:-



Learned trial Court has found that the plaintiff is entitled to injunction with respect to the land measuring 37 kanals 13 marlas. This judgment has been affirmed by First Appellate Court on re-appreciation of evidence.

Learned senior counsel appearing for the appellants has submitted that keeping in view the close relationship between the parties and the plaintiff being in possession, the entire suit should have been decreed.

On the other hand, learned counsel for the respondents has pointed out that once Sukh Lal was not the owner, therefore, he could not validly lease out the property for the period of 95 years. He submitted that in fact both the lease deeds are only to frustrate the rights of the defendant-

Braham Parkash. It will be noted that Sukh Lal had acknowledged Braham

Parkash as owner of major portion of the land owned by him in a judgment and decree dated 07.08.1998. Sukh Lal had also transferred 8 marlas of land vide registered sale deed dated 02.06.1998 in favour of Braham Parkash. The sale deed and judgment and decree is subject matter of decision in RSA Nos.673 and 960 of 2013.

Keeping in view the aforesaid facts, the plaintiff who is claiming right from Sukh Lal cannot claim to be better placed than Sukh Lal himself. Still further, there is no cogent evidence which prove that the Courts below have committed any error in appreciation of evidence. Once Sukh Lal was not owner on 31.03.1999, he could not lease out the property.

In view thereof, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

06.03.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No