

In the High Court of Punjab and Haryana at Chandigarh

RSA- 478 of 2013(O&M)
Date of Decision: 25.2.2019

Ram Saroop

---Appellant

versus

Yashpal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Alka Sarin, Advocate
for the appellant

Mr. Keshav Partap Singh, Advocate,
for the respondents.

Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 22.10.2012 passed by the Additional District Judge, Palwal whereby appeal preferred by the respondents-defendants against the judgment and decree dated 2.12.2010 was allowed, judgment and decree passed by the trial court were reversed and suit filed by the appellant-plaintiff for claiming ownership on the basis of occupancy tenancy rights was dismissed.

The appellant claimed himself to be in possession of land measuring 50 kanal 8 marlas situated in village Hodal Patti Andhua, Tehsil Hodal, District Palwal on payment of nominal rent for the past more than 100 years under the respondents and their predecessors. It is averred that at the time of inception of tenancy, respondents promised that appellant

would not be ejected from the suit property. The rent to be paid by the appellant would be 'bashreh malkaan' at the fixed nominal rate per year. The appellant has acquired occupancy right by virtue of Sections 5 and 8 of the Punjab Tenancy Act.

Counsel for the appellant would apprise that dispute between the parties with regard to rate of rent was decided upto this Court and it was held that rate of rent is Rs. 60/- per annum, but the Appellate Court in paras 13 and 14 of the judgment has made reference to rent being enhanced at different intervals and there was entry of rent @ Rs. 500/- and the same remained continued till the year 2001-02. This variation in rate of rent was taken into consideration to conclude that there was no implied promise by the respondents not to evict the appellant from the suit property. It is further submitted that the Appellate Court has not at all adverted to the judgment passed by this Court holding in favour of the appellant that rate of rent is Rs. 60/- per annum, therefore, findings of the Appellate Court based upon alleged variation of rent cannot be allowed to sustain and liable to be set aside.

Counsel representing the respondents has supported the judgment impugned with the submission that there is neither any specific plea nor any evidence adduced by the appellant that rent paid by the appellant was less than the land revenue and cesses payable on land, therefore, one of the essential ingredients for claiming occupancy tenancy rights becomes missing in the present case. He would further apprise the court that the respondents filed an application for additional evidence but the Appellate Court decided the appeal without disposing of application for additional evidence.

Be that as it may, perusal of the judgments passed by the Courts makes it evident that none of the courts has recorded a positive finding of fact, if rent paid by the appellant was less than land revenue and cesses payable on the land in order to claim rights of ownership on the basis of occupancy tenancy. Both the courts have only considered one aspect of the matter i.e. whether there was any express or implied agreement between the parties not to evict the appellant from suit land at behest of the respondents. For this purpose, the Appellate court has taken into account variation in rate of rent at different intervals, recorded in various revenue documents but without appreciating that dispute with regard to rate of rent stands settled by this Court and the rate has been fixed at Rs. 60/- per annum. The first Appellate court is the final court of fact and is obligated to appreciate all the factual and legal aspects of the case while deciding the appeal. In view of discussion made hereinbefore, since the Appellate Court has not discharged its obligation to decide all the legal and factual issues on the basis of materials on record, there is no alternative except to set aside the judgment and decree passed by the Appellate court and the matter is remitted to the Appellate Court for decision of the appeal afresh.

In view of what has been discussed hereinbefore, the appeal is disposed of. The judgment and decree passed by the Appellate court are set aside and the matter is remitted to the Appellate court for decision of the appeal afresh. Parties through their counsel are directed to appear before the Appellate court on 11.3.2019. The Appellate Court would ensure that if the respondents had filed an application for additional evidence, the same is also disposed of while deciding the appeal. The Appellate Court shall

decide the appeal within a period of four months of the parties putting in appearance.

(Rekha Mittal)
Judge

25.2.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No