

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3557-2015 (O&M)

Date of Decision: 05.07.2019

Mam Chand (since deceased) through his LRs and others

.... Appellants

Versus

M/s Antriksh Buildwell Pvt. Ltd.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. RS Budhwar, Advocate for the appellants.

RAMENDRA JAIN, J. (ORAL)

CM-8632-C-2015

Through this application under Order 2 Volume 5 of the Punjab and Haryana High Court Rules and Orders read with Section 151 CPC, prayer has been made for impleading the LRs of appellant-Mam Chand-appellant, who expired on 26.02.2015, leaving behind his legal representatives as mentioned in para 3 of the application.

Application is duly supported by affidavit. The legal representatives of deceased-Mam Chand mentioned in para No. 3 of the application are ordered to be brought on record, subject to all just exceptions.

It is, however, clarified that this order shall not confer any title upon the legal representatives to the estate of deceased-appellant-

Mam Chand and the same has been passed only to allow them to pursue their rights, if any, in this Regular Second Appeal.

CM stands disposed of.

RSA-3557-2015 (O&M)

As per office report, registered notice issued to sole respondent has been received back unserved with the report that it has left the given address. Earlier, it was served for 12.10.2018. However, despite service, it had gone un-represented. Therefore, it was ordered to be summoned through registered post with acknowledgment. Thus, in view of the above report, this Court has left with no other option, but to hear the appeal in its absence.

Through this regular second appeal, the plaintiff-appellants have laid challenge to the judgment and decree of the Ist Appellate Court dated 30.04.2015, whereby their suit for permanent injunction against the respondent-Company was dismissed, setting aside the well reasoned judgment and decree of the trial Court dated 06.01.2014.

Briefly, appellants filed suit for permanent injunction against the respondent-defendant claiming themselves to be the owner in possession of the land measuring 2 kanal 5 marlas as “*Gair Marusi* tenants”, detailed in para 2 of the impugned judgment, situated at village Bohli, Tehsil Thanesar, District Kurukshetra, on payment of 1/3rd *batai* under the respondent-Company or its vendor.

After holding trial, the trial Court decreed the suit of the appellant vide judgment dated 06.01.2014.

Being aggrieved, respondent-Company, preferred appeal against the aforesaid judgment and decree of the trial Court, who after hearing both the sides, setting aside the judgment and decree of the trial Court dated 06.01.2017, accepted its appeal, thereby dismissing the suit of appellants.

Learned counsel for the appellants *inter alia* contends that the trial Court has rightly observed that presumption of truth is always attached to the jamabandies which were continuously coming in favour of the appellants, showing their possession over the suit land as “*Gair Marusi* tenants”. The Appellate Court has illegally set aside the said finding of the trial Court, based on documentary evidence.

Having given thoughtful consideration to the submissions of learned counsel for the appellant, this Court finds the instant appeal completely devoid of any merit, for the simple reason that the appellants have no lease deed or any rent receipt in support of their plea that they were “*Gair Marusi* tenants” under the respondent-Company or its vendor.

PW-1 Tilak Raj (appellant No. 5 herein), expressed his ignorance regarding the person to whom they were paying the alleged 1/3rd *Batai* (rent). The appellants did not lead any evidence as to when they were inducted as alleged tenants over the suit land. It has also come in the evidence that the suit property had no irrigation facility. Therefore, it is quite un-believable that appellants were cultivating the suit land, without water which is quite impossible.

More so, on 27.07.2005, the Assistant Collector-II Grade, Thanesar, had changed the entries in favour of respondent-Company, which the appellants never challenged.

No question of law much less substantial, has been raised in this appeal.

I have gone through the impugned judgment of Ist Appellate Court dated 30.04.2015 and find no illegality or perversity in the same.

The instant regular second appeal being meritless, is dismissed.

July 05, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No