

RSA-3089-2017 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-3089-2017 (O&M)
Date of decision : 07.05.2019**

Ram Niwas and others

... Appellants

Versus

Bhana Ram (deceased) through LR's and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jatin Hans, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The present regular second appeal, at the instance of appellant-defendant Nos.6 to 10, is directed against the concurrent findings of fact, whereby the suit of the respondent-plaintiff, has been decreed by the trial Court to the extent of owner in possession of 56 kanals 7 marlas and *gair marusi* tenants of 30 kanals 05 and affirmed in appeal.

The case set up by the plaintiffs, in the suit, was that they were sitting tenants and during the existence of the tenancy, had purchased the land from the erstwhile owner measuring 64 kanals 18 marlas out of total land measuring 97 kanals 6 marlas, vide sale deed dated 11.09.2001, but claimed declaration and possession of the entire land.

The defendants, in the written statement, propounded the sale deed dated 03.04.2001, in respect of land measuring 32 kanals 9 marlas alleged to have purchased by defendant No.9/appellant, from the owner

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Roop Ram, alleging the possession in his favour and the recital of the sale deed reflected the possession in favour of the defendants.

Both the parties led extensive evidence.

The trial Court, as noticed above, partly decreed the suit. The appeal preferred thereof before the lower Appellate Court was also dismissed.

The total holding of the possession and the tenancy area i.e. 56 kanals 7 marlas and 30 kanals 5 marlas, comes 86 kanals 12 marlas.

Mr. Jatin Hans, learned counsel appearing on behalf of the appellants-defendants submitted that though, the recital in the sale deed of the plaintiffs, was of 64 kanals 18 marlas, but the Court did not agree with the same and granted them ownership and possession of land measuring 56 kanals 7 marlas and tenants of 30 kanals 05 marlas, but they cannot be termed as tenant for the simple reason that the sale deed of the appellant-defendant No.9, is prior in time. There was no need of according the tenancy as it would entail into second round of litigation, in the absence of any possession.

I am afraid the aforementioned argument is not sustainable as except the sale deed, no other revenue record like khasra girdawari, after 03.04.2001, in respect of the agricultural land, has been placed on record to show the possession. As per the Punjab Security of Land Tenures Act, 1953, once the tenant would always be a tenant and the remedy is to seek the ejectment, in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in **Shyam Lal vs. Deepa Dass Chela Ram Chela Graib Dass 2016 (7) SCC 572.**

At this stage, Mr. Hans, informed the Court that the plaintiffs-

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respondents have already availed remedy of filing the suit claiming declaration of ownership being occupant tenant. In such circumstances, the remedy of the defendant No.9/appellant, lies else where.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgments and decrees, under challenge, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

07.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**