

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

**RSA No.3475 of 2017 (O&M)
Date of Decision.25.01.2019**

Rambir and others
Omwati @ Somwati

Vs

...Appellants
...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Parveen Dutt, Advocate for
Mr. Sanjeev Kr. Panwar, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.8399-C of 2017

For the reasons stated in the application, delay of 27 days
in filing of the appeal is condoned.

Application is allowed.

RSA No.3475 of 2017

The present regular second appeal is directed against the
concurrent finding of fact whereby the suit of the appellants-plaintiffs
for declaration that they are in possession of the suit land described in
the plaint by laying challenge to the entries in the name of defendant in
the column of possession being illegal, not binding and are liable to be
corrected with consequential relief of permanent injunction restraining
the defendant from interfering into peaceful possession and
dispossession, has been dismissed by both the Courts below.

It was case of the plaintiffs that they are owners in
possession of the suit land measuring 92 kanals 2 marlas on the basis
of the jamabandi for the year 1997-1998, out of which plaintiff No.1 is
owner in possession to the extent of half share and plaintiffs No.2 to 5

of other half share in equal. The land was purchased by Jasram in the year 1985. As the law of pre-emption was applicable, he executed lease deed dated 09.07.1985 in the name of mother of the plaintiff namely Sara Devi but the lease was never acted and entries were recorded just for the purpose of record. Under the family settlement, in view of the decree suffered by Jasram in favour of Rambir and Braham Parkash, the land was transferred in their names on the premise that on death of Sara Devi, lease rights were inherited by her legal heirs. Lakhi Ram and Baljeet relinquished their right as Braham Parkash died, therefore, his share was inherited by plaintiffs No.2 to 5, thus, they were recorded to the owners. Sara Devi never paid any lease amount and in such circumstances, entry in the name of respondent-defendant being the legal representative of Sara Devi was incorrect, though possession of the entire land was with the plaintiffs.

Defendant opposed the suit, raised the objection with regard to maintainability, payment of court fee and denied the family settlement and decree. It was stated that lease money was paid but no receipt was given. The factum of Braham Parkash having any legal heir was emphatically denied.

The plaintiffs in support of the aforementioned pleadings examined two witnesses and brought on record Ex.P1 to P6 and the defendant examined one witness and brought on record Ex.D1 to D3.

Ms. Parveen Dutt, learned counsel appearing on behalf of the appellants-plaintiffs submitted that judgments and decrees of the Courts below are not sustainable in the eyes of law as the defendant did not place on record any material to establish the exclusive possession

as the prayer was multi-fold and not only with regard to granting declaration but also for correction of the revenue record. Defendant failed to prove payment of any lease money, in view of the relinquishment deed by two other sons and two daughters in favour of Rambir and Braham Prakash, no other person had any share in the property. In such circumstances, the revenue entries were required to be corrected.

I am afraid aforementioned argument is not sustainable, for, the plaintiff failed to belie factum of existence of the lease deed Ex.P2. One the lease is there, possession of person, particularly of defendant in the suit property and reflection of the entry in the revenue record on the basis of possession remedy available was to seek ejectment in accordance with law. Lease deed carried presumption of truth being a registered document. This is what has been noticed by the Courts below. Law with regard to termination of lease deed is not longer res integra in view of the provisions of Section 106 of the Transfer of Property Act.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 25, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No