

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 1588 of 2020 (O&M)
Date of Decision: 09.11.2020

Krishan Kumar and others

.....Appellants

Versus

Lala Mathura Prasad Trust (Regd.)

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Anil Kumar Saini, Advocate
for the appellants.

HARNARESH SINGH GILL, J.

Case was taken up for hearing through video conferencing.

This Regular Second Appeal is directed against the judgments and decree passed by the Courts below, whereby the suit filed by the plaintiff-respondent was partly decreed and the appeal filed by the defendant-appellants was dismissed.

The respondent/plaintiff – Lala Mathura Prasad Trust (Regd.) (for short 'the Trust'), filed the suit for mandatory injunction, being owner of 35 kanal 10 marla of land, averring therein that the plaintiff-Trust had handed over permissive possession of the suit property to one Aadu for the purpose of cultivation. Said Aadu was a licensee over the suit property, but with the passage of time, his intentions turned mala-fide and he in collusion with the revenue officials got the entry in his name as “*Gair Marusi, Batai Tihai Galla and Neera*”, without the consent of the owner i.e. respondent/plaintiff. After the death of Aadu on 29.09.2013, the appellant-defendants took the possession of suit property illegally.

As per the stand of the appellant-defendants before the Courts below, the permissive possession over the suit property was denied. It is also denied that Aadu was licensee or that the entries in the revenue records are illegal. Rather, it was asserted that Aadu was a 'Gair Marusi' tenant over the suit property and was paying 1/3rd share to the grandfather of the plaintiff and later on to the plaintiff and after the death of Aadu on 29.9.2013, the defendants came in possession of the suit property being legal representatives of Aadu and are now cultivating the suit land as *Gair Maursi* and are paying 1/3rd share of Galla and Neera as rent.

Taking into consideration the evidence on record and after hearing the counsel for the parties, the trial Court partly decreed the suit with costs and the defendants were directed to hand over the actual and vacant possession of the suit property to the plaintiff-trust within three months of passing of the judgment. The appeal preferred by the appellant-defendants was dismissed with costs by the Appellate Court.

Learned counsel for the appellants framed the following substantial questions of law:-

- (1) *Whether the legal/compulsory presumption attached to the entries in record of rights in view of Section 44 of the Punjab Land Revenue Act, 1887, can only be rebutted by proof and not by mere explanation ?*
- (2) *Whether placing reliance on the decision(s) without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed is impermissible in view of the law laid down by Hon'ble Supreme Court in the case **State of Haryana versus Agm Management Services Ltd., 2006(5) SCC 520** ?*
- (3) *Whether the Civil Court has no jurisdiction to entertain and decide the dispute regarding tenancy and eviction of a tenant from agricultural land in view of the non-obstanate clause in*

Section 14-A of the Punjab Security of Land Tenures Act, 1953, a special law ?

- (4) *Whether not applying the law which should have been applied amounts to a mistake or error apparent on the face of the record, vitiating the judgment and decree ?*
- (5) *Whether the impugned judgments and decrees are perverse ?*

It is argued by the learned counsel for the appellants that the defendants and their predecessors were/are in possession as tenants i.e. Gair Marusi and 1/3rd of the produce was/is given to the respondent/plaintiff and there is nothing on record to show otherwise. Though appellant/ defendant No. 3 while stepping into the witness box as DW-1 did not dispute the ownership of the plaintiff-Trust over the suit land yet his testimony that the defendants are not licensees but tenants as Gair Marusi and are paying 1/3rd share of the produce being the legal representatives of Aadu, who had passed away on 29.9.2013, goes unrebutted. The khasra girdawaris and jamabandis for the year 1977-1978, 1979-1980, 1984-1985 and 1989-1990 are placed on record along with other documents as Ex. D-1 to Ex. D-12.

It is further argued that PW-3 Kishan, who is the accountant of plaintiff, deposed that he went along with Bal Kishan, Secretary and demanded Mall Batai two or three times from the persons, who are presently in possession of the land but this admission has been ignored by both the Courts below. It is, thus, submitted that both the judgments and decrees are perverse and are liable to be set aside.

I have heard the learned counsel for the appellants and with his able assistance, have gone through the judgments and decrees passed by both the Courts below.

The Appellate Court, while dismissing the appeal filed by the appellants/defendants, has held as under:-

“9. The first point for determination in this case is if the possession of plaintiff/appellant is of tenant or they are in unauthorized possession. Insofar as revenue entries are concerned, this Court is of considered opinion that in order to create a tenancy, there must be a parcel of land and a definite rent agreed between the parties. The defendants have relied upon Ex.D5 Jamabandi pertaining to the year 1977-1978 and Ex.D6 Jamabandi pertaining to the year 1979-1980. Cumulative appreciations of both the Jamabandis clearly reveals that in the year 1977- 1978, Aadu is shown to be in cultivating possession of 62 Kanal 3 Marla land, out of that the present disputed property is also included in the said 62 Kanal 3 Marla land. As per Jamabandi Ex.D5, it may be inferred that over part of the disputed property, the defendants are shown to be in possession and over part of the property, Aadu is not shown to be in possession. However, rate of rent is shown as Batai Galla and Neera. As per Jamabandi Ex.D6, Aadu is shown to be Gair Morusi over property measuring 34 Kanal 19 Marla out of which, same Khasra numbers are included, which pertains to the disputed property. However, column of rent does not show that there was any rent fixed between the parties. As per Jamabandi Ex.D7 pertaining to the year 1984-1985, Aadu is shown to be in possession of some land measuring 34 Kanal 5 Marla, out of that Khasra number shown as 38//10/1 and 38//1 is also included in this land, which were earlier part of property shown in Ex.D6. As per Jamabandi pertaining to the year 1989-1990 Ex.P8, Aadu is shown to be in possession of 35 Kanal 10 Marla. Therefore, the aforesaid fact clearly reveals that Aadu was not in possession of any definite parcel of land over the area. The property which is shown to be in possession of the defendants, reflects that defendants are shown to be Gair Morusi. In such circumstances, presumption attached with the revenue record is destroyed by the defendants themselves. In aforesaid circumstances, a presumption attached with revenue entries,

showing therein that the defendants or their predecessor Aadu was recorded as tenant on payment of some rent, is not available to the defendants.

10. Insofar as recording of the defendants and their predecessor Aadu as Gair Morusi is concerned, this Court is of the considered opinion that mere entry of a person as Gair Morusi is not enough rather in order to prove that a person is tenant on a particular land, it has to be categorically proved that he was paying some rent in respect of a particular parcel of land from long ago. However, in this case, the defendants could not produce any record that any rent receipt was issued by the plaintiff, any Rapat was entered by revenue authorities when Aadu took over possession of the disputed property as tenant. Therefore, the defendants who are successors of Aadu are not tenants. My aforesaid view if fortified with law laid down in Ram Karan Versus Financial Commissioner 1980 PLJ 295 (P&H).

11. Insofar as suit for possession filed by the plaintiff is concerned, this Court is of the considered opinion that the possession of defendants on the disputed property is that of simple licensee, of which possession was given by the plaintiff to Aadu. It is not disputed that Addu expired in the year 2013. If it is so, the licence is automatically revoked. Thereafter, the possession of defendants over the disputed property is that of unauthorized person and thus, plaintiff can seek possession. In view of Ram Murti Versus Smt. Sarla Devi 1998 (2) PLJ 641, a suit for mandatory injunction filed by the plaintiff, the same may be treated a suit in fact for possession though couched different in the form of a suit for mandatory injunction, therefore, present suit may be considered as a suit for possession.”

This Court finds that no evidence has been produced before the

Courts below to show as to in which manner the property was tenanted

and/or who had given the said property on rent. There is nothing on record

to show that the rent was ever paid nor the manner of payment of rent was proved on record. Above all, both the Courts below have rightly concluded that the revenue record does not indicate that any rent was payable. The entry in the revenue record as Gair Marusi alone cannot prove the factum of the tenant at will in respect of the suit land. Both the Courts below have rightly concluded that the defendants are in an unauthorized possession of the suit land.

A Single Bench of this Court in 'Umesh Kumar Vs. Anil Kumar and another, 2014(3) PLR 184, has held that in the absence of anything on record with regard to payment of lease money/batai, no relationship of landlord and tenant can be inferred. It was further held that merely on the basis of single entry in the jambandi, such relationship cannot be inferred.

In the instant case, the appellant-defendants rely upon the entry of Gair Marusi tenant in the revenue record. However, taking into consideration the law laid down in Umesh Kumar's (supra), no benefit of such entry can either be sought or granted to the appellant-defendants.

No substantial question of law arises for the consideration of this Court.

Consequently, I do not find any patent illegality or perversity in the impugned judgments and decree passed by the Courts below.

The appeal is dismissed.

(HARNARESH SINGH GILL)
JUDGE

November 09, 2020
Gurpreet/parveen

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No