

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

RSA-1130-2014 (O&M)
Date of decision : 05.02.2020

Kanwar Singh

...Appellant

Versus

Sushila Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.R. Yadav, Advocate for the appellant.

Mr. Sanjay Mittal, Advocate for respondent Nos.1 to 4.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant has filed the present Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit claiming superior right to pre-empt the sale deed.

The plaintiff had claimed that he has superior rights to pre-empt the sale deed executed by defendant Nos.5 to 7 in favour of defendant Nos.1 to 4 dated 29.11.2007 on the ground that he was tenant in possession of the land sold on the date the sale deed was executed.

The defendants contested the suit and pleaded that the plaintiff has never remained in possession.

Learned trial Court, on appreciation of evidence, while noticing that before the Assistant Collector, IInd Grade, the plaintiff had admitted

that he never remained in possession of the disputed land, dismissed the suit. The Court has also noticed that no evidence has been led to prove that the plaintiff continued in possession as a tenant after the death of his father Sheo Nand in the year 1980. Learned First Appellate Court, after re-appreciating the evidence, affirmed the aforesaid findings of fact.

Learned counsel for the appellant vehemently argued that since grandfather of the appellant and thereafter father of the appellant were recorded as tenants in possession, therefore, the presumption is with respect to continuation of tenancy. He further submitted that in absence of any evidence to the contrary, the Courts erred in dismissing the suit.

On the other hand, learned counsel for the respondents has pointed out that two brothers of the appellant had purchased the share in the property in the name of their wives. Still further, no evidence has been produced to prove that the plaintiff ever remained in possession of the suit property as a tenant.

This Court has considered the submissions of learned counsel for the parties and is of the considered view that there is no substance in the present case.

Normally, the tenancy is result of bilateral contract between the parties. No doubt, such contract can be oral. However, there has to be some semblance of evidence to prove that the tenancy exists. No doubt, tenancy on the agricultural land is heritable, however, it cannot be extended till eternity. The plaintiff has not produced copies of those sale deeds by which land measuring 3 kanals 13 marlas was sold in favour of wives of his two brothers.

Learned First Appellate Court, has found that total land under the tenancy of grandfather of the appellant was 10 kanals 18 marlas, out of which land measuring 3 kanals 13 marlas was sold in favour of wives of two brothers of the plaintiff. Remaining land i.e. 7 kanals 5 marlas has been sold in favour of defendant Nos.1 to 4 by sale deed in question. Originally, Sewga was in possession as a tenant. He had three sons Jhuthar, Maru Ram and Mohar Singh. If the right of inheritance is applied, each branch succeed to tenancy to the extent of 1/3rd share. Thus, the share of family of Sheo Nand comes to only 3 kanals 13 marlas.

Before granting relief of pre-emption to a registered sale deed, the Court has to be certain about the existence of superior right, a tenant claims. Such superior rights cannot be permitted to be exercised only on the basis of assumptions.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

05.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No