

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 3775 of 2014 (O&M)
Date of Decision: 3.2.2020**

Vijay Singh and others

---Appellants

versus

Smt. Shakuntla and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Manoj Chahal, Advocate
for the appellants**

**Mr. Surinder Gandhi, Advocate,
for respondents No. 1 and 2**

None for respondents No. 3 to 6

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession by way of pre-emption in respect of land measuring 24 kanal being 480/800 share of land measuring 40 kanals, detailed in head note of the plaint was dismissed by the trial court vide decree and judgment dated 13.9.2011 that came to be affirmed in appeal by the Additional District Judge, Bhiwani.

The appellants-plaintiffs staked their claim in respect of their right of pre-emption by alleging that Sh. Tara Chand, their father was in cultivating possession of the suit land as tenant on 1/3rd *batai* who had executed Will dated 12.2.1999 on the basis whereof the appellants-plaintiffs have acquired all rights in movable and immovable property of Sh. Tara

Chand. It is averred that defendants No. 3 to 6, erstwhile owners of the suit property sold the same in favour of defendants No. 1 and 2 without any notice to the appellants-plaintiffs and they are entitle to pre-empt the sale made by defendants No. 3 to 6 in favour of defendants No. 1 and 2.

Defendants No. 1 and 2 contested the claim by raising usual preliminary objections. On merits, they averred that Tara Chand was ejected from disputed land vide order dated 26.2.1992 passed by the then Assistant Collector Ist Grade, Bhiwani and appeal filed against the said order by Tara Chand was dismissed vide order dated 15.9.1993, therefore, Tara Chand was not a tenant over the disputed land since 26.2.1992 and as such the appellants can not assert their claim to pre-empt the sale by defendants No. 3 to 6 in favour of answering defendants vide sale deed dated 24.11.2006.

The question for consideration is, whether the appellants can assert themselves to be tenant over disputed land and their right to preempt the sale by defendants No. 3 to 6 in favour of defendants No. 1 and 2 ?

Counsel for the appellants, in response to a query, would fairly inform that Sh. Tara Chand, predecessor-in-interest was evicted from disputed land vide order dated 26.1.1992 passed by the Assistant Collector Ist Grade, Bhiwani and appeal preferred by him was dismissed. However, it has been argued that order of eviction was a conditional one that tenant would be dispossessed only after two standard acres of land was given to him out of surplus area.

Indisputably, order of eviction passed against Tara Chand had attained finality meaning thereby that he was no longer a tenant in the disputed land subsequent to passing of eviction order and as such the

appellants can not claim tenancy rights in the disputed land on the date of sale deed on 24.11.2006 even if they were not actually dispossessed from land under their occupation. For this purpose, the courts have relied upon judgment of Hon'ble the Supreme Court **Rikhi Ram and another vs. Ram Kumar and others AIR 1975 (SC) 1869**, wherein the court in para 5 has held to the following effect:-

“The landlord could not determine the tenancy by his unilateral action under the Land Tenures Act. An order of eviction was necessary to be obtained under Section 9. The relationship of the landlord and the tenant ceases to exist between the parties after the passing of an order of ejectment against the tenant. Dispossession in execution of the order is not necessary for determination of the tenancy.”

Taking into consideration enunciation in **Rikhi Ram and another's case (supra)**, the aforesaid question is answered against the appellants and in favour of the respondents. In this view of the matter, I do not find an error much less perversity in the impugned judgments that would call for intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

3.2.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No