

RSA-3897-2017(O&M)	
and connected cases	1

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

1. RSA-3897-2017(O&M)

Master Gian Chand
.....Appellant

Versus

Sucha Singh and anotherRespondents

2. RSA-3898-2017(O&M)

Ashwani Kumar
.....Appellant

Versus

Sucha Singh and anotherRespondents

3. RSA-3904-2017(O&M)

Ashwani Kumar
.....Appellant

Versus

Sucha Singh and anotherRespondents

4. RSA-3903-2017(O&M)

Sukha Singh
.....Appellant

Versus

Sucha Singh and anotherRespondents

5. RSA-3902-2017(O&M)

Ram LubhayaAppellant

Versus

Sucha Singh and another

**RSA-3897-2017(O&M)
and connected cases 2**

**.....Respondents
6. RSA-3901-2017(O&M)**

**Ashwani Kumar
.....Appellant**

Versus

**Sucha Singh and another
.....Respondents**

7. RSA-3900-2017(O&M)

**Mandip
.....Appellant**

Versus

**Sucha Singh and another
.....Respondents**

8. RSA-3899-2017(O&M)

**Harbilas
.....Appellant**

Versus

**Sucha Singh and another
.....Respondents**

Date of decision:31.01.2020

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present:- Mr.Harsh Bunker, Advocate for the appellant
(in all appeals)**

**Mr. Vijay Lath, Advocate for the respondents
(in all appeals)**

ANIL KSHETARPAL, J.

By this judgment, eight Regular Second Appeals i.e RSA

Nos. 3897, 3898, 3899, 3900, 3901, 3902, 3903 and 3904 of 2017 shall

stand disposed of as the issue which needs determination is common. Learned counsels for the parties are also common. They have agreed that all these appeals can be conveniently disposed of by a common judgment.

Defendant-appellant (in all the appeals) are in Regular Second Appeal against concurrent finding of facts arrived at by the Courts below. The plaintiffs-respondents filed a suit for possession on the basis of title and for recovery of rent/mesne profit. They pleaded that tenancy in favour of the defendant-appellant has been terminated by a notice dated 24.8.2013. Defendant contested the suit and pleaded that Gian Singh son of Karnail Singh is the owner of the property who had not only constructed the shops but had given them on lease.

This Court has heard learned counsel for the parties at length and with their assistance gone through the judgments passed by the Courts below and the requisitioned record from the Trial court.

Learned counsel appearing for the appellants has submitted that the case set up by the plaintiffs is proved to be false as per the finding recorded by the Trial Court. He, hence, submitted that the Courts erred in decreeing the suit. He further submitted that the construction on the land was carried out by Gian Singh s/o Karnail Singh. He, hence, submitted that building is owned by Gian Singh, even if, it is proved that land underneath is owned by the plaintiffs-respondents. He, hence submitted that the plaintiffs' decree for possession has been wrongly passed.

On the other hand, learned counsel for the respondents has

submitted that the plaintiffs are proved to be owners of the property. He hence submitted that Gian Singh was only cultivating the land on behalf of his father. He, hence, submitted that rights of the plaintiffs could not be defeated, particularly, when defendants have no right or title or interest in the property.

This Court has considered the arguments of the learned counsel for the parties and finds that the present appeals are liable to be dismissed. No doubt, it has come in evidence that electricity connections were got sanctioned and are in the name of Gian Singh son of Karnail Singh. It has also come in evidence that Gian Singh had given the shops on rent and defendants-appellants have been paying the rent to him and not to the plaintiffs. However, that is not sufficient. The plaintiffs have filed the present suit on the basis of title. They have proved their title by producing the copies of jamabandi and copy of transfer deed dated 4.3.2009. Thus, the ownership of the plaintiffs is established.

Even if the plaintiffs failed to prove that they had received the rent still the plaintiffs are owners of the property. The suit is for possession. The defendants (previously tenants) do not claim protection of rent laws. In such situation, the point for consideration of this Court is whether the suit filed by the plaintiffs should be dismissed only on the ground that plaintiffs have failed to prove that they were receiving the rent.

At this stage , it may be significant to note that one of the plaintiffs deposed that Gian Singh was cultivating the land on behalf of his father Lashkar Singh. There is no finding that the building (shops)

was constructed by Gian Singh. Gian Singh son of Karnail Singh has appeared as DW2. He claimed that he is owner of the property, however, no evidence to this effect has been produced. He produced photocopies of certain jamabandis for the year 1990-91, 2000-2001 and 2005-06 however, he is not recorded as owner therein. Even certified copies thereof have not been produced. These jamabandis were only marked. Never admitted in evidence after marking them with exhibits. Still further it is the case of plaintiffs that Gian Singh was cultivating the land on behalf of their father who had shifted to UK in the year 1960. Therefore, Gian Singh was acting on behalf of the owner.

Now let us examine the arguments of the learned counsel for the appellant. It may be noted here that both the Courts have not recorded any finding that the shops were built by Gian Singh from his own funds. In fact, there is no finding that it is the Gian Singh who had got constructed these shops. Still further Gian Singh or the defendants have not produced any evidenced to prove that shops were got constructed by Gian Singh. Although Gian Singh has appeared in evidence and admitted that he had knowledge of the proceedings however, still Gian Singh or defendants have chosen not to produce any evidence to prove that it is Gian Singh who had got constructed the shops from his own funds. Therefore, the argument of the learned counsel that the building consisting of various shops is owned by Gian Singh has no substance. Once the plaintiffs are owners of the property and defendants failed to prove any right title or interest in the property, the plaintiffs are entitled to the decree for possession. The defendants in the present

appeals had taken a stand that Gian Singh is owner as well as their landlord. It was the duty of the defendants to produce evidence and establish that fact. However, defendants have failed to produce cogent and reliable evidence to establish that fact. Hence, all the appeals are ordered to be dismissed.

31.01.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No