

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

RSA-3592-2018 (O&M)
Date of decision : 24.01.2020

Brij Mohan

...Appellant

Versus

Daya Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil Kumar Rana, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-9386-C-2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 34 days in refiling the present appeal is condoned.

Application is allowed.

CM-9387-C-2018

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of respondent No.4 as mentioned in para 1 of the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application is allowed.

Main case

The suit filed by the plaintiff has been decreed as prayed for.

The plaintiff had claimed that he alongwith proforma defendant Nos.94 to 97 have become owners in view of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights), Act, 1952. The case of the plaintiff was based upon the fact that he alongwith the proforma defendants are in possession of the land as tenant on payment of amount equivalent to the amount of the land revenue and cess.

The defendants did not contest the suit. The Court, on appreciation of evidence and after noticing that predecessors of the plaintiff as well as proforma defendants are in occupation for more than 100 years, granted the decree as prayed for.

Now, the plaintiff-appellant prays that such declaration should be only confined/restricted to the plaintiff and there should not be any declaration in favour of the proforma defendants.

Learned counsel for the appellant submits that since the proforma defendants and the plaintiff had resolved their dispute and thereafter the proforma defendants had abandoned their right, therefore, the Courts have erred.

On a pointed Court question, as to whether any application for amendment of the plaint was made, learned counsel for the appellant admitted that no prayer for amendment has been made. However, he submitted that two applications for additional evidence were filed with a prayer to produce the Will but only one application has been decided whereas second one has not been considered.

This Court with the help of learned counsel, has seen second application for permission to lead additional evidence, which has been

placed on file as Annexure A-1 at page 55 of the paper book. The plaintiff-appellant in the aforesaid application has sought permission to place on record copy of order dated 01.01.2004 passed by the Naib Tehsildar-cum-Assistant Collector, IInd Grade, Ballabgarh. Copy of the order passed by the Assistant Collector, IInd Grade, has also been annexed as Annexure A-2. On careful perusal of the aforesaid order, it is apparent that an application for correction of khasra girdawri filed by father of the appellant was allowed. Khasra girdawri only depicts who is now cultivating the land. On careful reading of the order, it is apparent that correction of khasra girdawri was sought only from Kharif crop of 2000. Order of correction of khasra girdawri does not prove that the proforma defendants have abandoned their right in the property.

In view thereof, there is no ground to interfere.

Accordingly, the present Regular Second Appeal is dismissed.

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

24.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No