

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

**RSA No. 5274 of 2018 (O&M)**

**Date of decision: 13.01.2020.**

Dr. Badruddin

..... Appellant.

Versus

Shamsuddin and others

..... Respondents.

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present:- Mr. Vikram Singh, Advocate, for the appellant.

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**ANUPINDER SINGH GREWAL, J. (ORAL)**

The appellant/plaintiff has challenged the judgment and decree of the Courts below whereby his suit for declaration with consequential relief of permanent and mandatory injunction has been dismissed.

Learned counsel for the appellant/plaintiff contends that the appellant/plaintiff had been given the suit land on lease for 99 years by defendant/respondent No. 1 and 'pattanama' was executed on 02.05.1989 which was registered in the office of Sub Registrar, Faridabad, on 04.05.1989 and since then the appellant/plaintiff is in actual physical possession as a 'pattedar' and, therefore, the suit ought to have been decreed in his favour. He also contends that respondent/defendant No.1 had colluded with respondent/defendant No. 2 in transferring the suit land in his favour and later on respondent/defendant No.2 had further transferred it to respondent/defendant No. 3. Respondent/defendant No. 3 transferred it to respondent/defendant No.4, who transferred it to respondent/defendant No.5.

Heard.

The appellant/plaintiff had filed a suit for declaration with consequential relief of permanent and mandatory injunction. It was pleaded that respondent/defendant No.1 is the owner of agricultural land bearing Khewat/Khatoni No. 152/304, Rect. No. 12, Killa No. 16/1 measuring 7 kanal 5 marla situated in Mauja Noorpur Dhumaspur, Tehsil and District Faridabad, and had given the same for 99 years 'patta' to the appellant/plaintiff. 'Pattanama' was executed on 02.05.1989 and registered in the office of Sub Registrar, Faridabad, on 04.05.1989. It was further pleaded that the appellant/plaintiff is in actual physical possession as a 'pattedar' under respondent/defendant No. 1 and continues to be 'pattedar' upto 01.05.2088. Respondent/defendant No. 1 without any right or authority and in disregard to the 'pattedari' rights of the appellant/plaintiff had sold the suit land in favour of respondent/defendant No. 2 and sale deed was executed and registered on 27.06.1989.

Findings of fact have been recorded by the Courts below that as per jamabandi for the year 1963-64 pertaining to the suit land, Jabar Khan had been recorded as owner whereas Chahat Khan son of Chander Khan had been recorded in possession over the suit land as 'gair marausi' on the basis of half 'batai'. The entries continued till 1978-79. In the jamabandi for the year 1983-84, Shamsuddin son of Mawadi (respondent/defendant No. 1), had been recorded as owner qua the suit property whereas Chahat Khan son of Chander Khan had been recorded in possession as 'gair marausi' on payment of half 'batai'. Respondent/defendant No. 1 later on had sold ownership rights in respect of the suit land in favour of Raman Tandon vide registered

sale deed dated 27.06.1989 for which mutation was also sanctioned. The name of Chahat Khan as 'gair marausi' was also recorded in the revenue record at that time and after the death of Chahat Khan, his legal representatives vide rapat roznamcha bearing No. 163 dated 01.09.2007 had relinquished their rights in the suit property in favour of Raman Tandon. Later on, Raman Tandon had sold the suit land to Parveen Begum vide registered deed No. 5753 dated 25.06.2007. Pareveen Begum later on had sold the the leasehold rights of the suit property in favour of Sharif Khan (respondent/defendant No. 4) vide lease deed No. 25798 dated 02.03.2009 and later on sold the ownership rights also subject to the 'pattadari' rights in favour of respondent/defendant No. 5. When the lease deed had been executed by respondent/defendant No. 1 in favour of the appellant/plaintiff, one Chahat Khan was in cultivating possession. This is evident from the documents Ex. D3 to Ex. D10. Therefore, the alleged lease deed without transferring of possession would not help the case of the appellant/plaintiff. The possession was of Chahat Khan in the capacity of 'gair marausi' as reflected in the documents Ex. D3 to Ex. D10. The registered sale deed was executed by respondent/defendant No. 1 in favour of respondent/defendant No. 2 for consideration and, therefore, the subsequent purchaser had also acquired ownership rights and the 'gair marausi' rights were relinquished by the legal heirs of Chahat Khan in favour of respondent/defendant No. 2. Rapat No. 163 in the roznamcha has been entered on 01.09.2007 and this entry has been duly proved by DW2 Dalbir Singh, Patwari. The Courts below have rightly come to the conclusion that at the time of execution of the lease deed, the possession had not been handed over and, therefore, the lease deed

without delivery of possession is void. On the contrary, respondent/defendant No.5 had got ownership rights through registered sale deed and was in possession of the suit land. The leasehold rights, which were with Chahat Khan at the time of execution of the sale deed, were subsequently relinquished by his legal heirs. The leasehold rights in favour of Sharif Khan were also relinquished in favour of respondent/defendant No. 5 on 12.10.2011 vide registered deed No.11225. Therefore, I do not find any ground to interfere in the concurrent findings of facts recorded by the Courts below.

Consequently, the regular second appeal stands dismissed.

Pending application, if any, shall also stand disposed of.

**(ANUPINDER SINGH GREWAL)**  
**JUDGE**

13.01.2020  
Ramesh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No