

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

R.S.A.No.386 of 1989(O&M)

Date of decision: 22.07.2022

Jetha Nand and others

..Appellants

Versus

Balbir Singh (since deceased) through LR's and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B.Goel, Advocate, and
Mr. Rajinder Goel, Advocate
for the appellants.

Mr. Ajay Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

After having heard the learned counsel representing the parties at length, this court is of the opinion that the matter is required to be remitted back to the First Appellate Court to decide the plea of the appellants having perfected their title by way of adverse possession. Hence, detailed facts are not required to be noticed. However, to complete the narration of facts, some skeleton facts are being noted.

The plaintiffs while filing the suit for possession claim that the defendants were inducted as tenants on payment of 1/3rd share of the crop, however, they have stopped paying the rent from the Kharif Crop 1978. It is claimed that the relationship of landlord and tenant has come to an end and therefore, the plaintiffs are entitled to possession.

The defendants, while contesting the suit, claim that they were

never inducted as tenants and in fact, they purchased the land as well as the house through an oral sale on payment of Rs.11,000/- in the year 1964. In the alternative, it was asserted that the defendants have perfected their title by adverse possession because they are openly proclaiming themselves to be owners of the suit land since 1964.

When one of the plaintiffs appeared in the evidence as PW6 in 1983, he admitted that their family shifted out of the village 40-50 years ago and settled in the State of Rajasthan. It may be noted here that there were some proceedings for correction of the revenue record before the revenue authorities in which, on inspection of the land, an entry was made in favour of the defendants that they are in possession of the property. The plaintiffs filed an application for recall thereof which was dismissed by relegating the parties to the Civil Court.

The trial court dismissed the suit whereas the First Appellate Court has reversed the judgment and decree passed by the trial Court. It may be noted here that both the courts have concurrently found that the plaintiffs have failed to prove their case with regard to any relationship of landlord and tenant between the plaintiffs and the defendants. The trial court held that the defendants have purchased the property through an oral sale, however, the First Appellate Court has reversed the finding.

It is well settled that immovable property worth more than Rs.100/- cannot be transferred without registered sale deed in terms of Section 54 of the Transfer of Property Act, 1882 read with section 17 of the Registration Act, 1908. However, there is one important issue which needs deeper consideration. The First Appellate Court, on the one hand, has recorded a finding that there was no oral sale, however, at the same time, has

declined to examine the acquisition of the ownership by way of adverse possession on the ground that the possession of the defendants is permissive on account of oral sale. The First Appellate Court was required to return a definite finding on that fact. The court could have observed that there was an oral sale which was not permissible while proceeding with the case or the court could have observed that there was no oral sale and then the nature of possession of the defendants should have been examined. This has to be considered in the context that the plaintiffs have admitted that their family shifted out of the village somewhere in 1940's.

Keeping in view the aforesaid facts, the matter is remitted back to the First Appellate Court to decide the matter afresh.

Needless to observe that the First Appellate Court will independently decide the appeal without being influenced by the observations made by this Court.

The parties are directed to appear before the court of learned District and Sessions Judge, Rewari, on 08.08.2022.

All the pending miscellaneous applications, if any, are also disposed of.

July 22th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*