

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

RSA-2588-2022(O&M)

Date of decision:-2.12.2022

Gurdial Singh and another

...Appellants

Versus

Ashok Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Naveen Batra, Advocate
for the appellant.

H.S. MADAAN, J.

CM-8963-C-2022

For the reasons mentioned in the application, the same is allowed and delay of 159 days in filing of the present appeal stands condoned.

RSA-2588-2022(O&M)

1. Briefly stated, facts of the case are that plaintiff Ashok Kumar son of Sh.Ram Lal had brought a suit against defendants Gurdial Singh and Gurdev Singh, both sons of Piara Singh, residents of village Kadari Chak, P.S. Tanda, Tehsil Dasuya, District Hoshiarpur, claiming vacant possession as owner of the land measuring 15 kanals 17 marlas situated at village Urmar, P.S. Tanda, Tehsil Dasuya, District Hoshiarpur and for recovery of Rs.1,80,000/- as mesne profits from Hari 2011 to Hari 2014 i.e. for three years on account of use and occupation of the land by the defendants. The plaintiff further asked for grant of a decree for permanent injunction restraining the defendants from changing the nature

of the suit property in any manner and also restraining the defendants from cutting and removing the trees therefrom.

2. On notice, the defendants appeared and filed written statement contesting the suit contending that defendants had taken the land for cultivation from the plaintiff orally for a period of ten years starting from the sowing of the crop of Hari 2014 on share produce basis; the period of lease was held to be extendable further by the mutual consent of the parties; the plaintiff instead of receiving his half share of the produce for the crop of Hari 2014 asked the defendants to vacate the land stating that he wanted to sell it and he would receive more price if the land was vacant; the defendants expressed their inability to vacate the land since they had already sown the Sauni crop after incurring considerable expenditure and requested the plaintiff to abide by the terms of the lease and it is for that reason that the plaintiff had filed the suit in question since he could not get the possession from the defendants as per his will and fancy to the inconvenience of the defendants. Denying the remaining assertions, the defendants craved for dismissal of the suit.

3. On the pleadings of the parties, following issues were framed:

1. Whether plaintiff is entitled to suit for possession as prayed for?

OPP

1. A. Whether plaintiff is entitled for permanent injunction as prayed for?OPP

2. Whether suit of the plaintiff is not maintainable?OPD

3. Whether plaintiff has not come to the court with clean

hands?OPD

4. Whether plaintiff is estopped by his act and conduct from filing present suit?OPD

4A Whether court has no jurisdiction to try the present suit?OPD

5. Relief.

4. The parties led evidence in support of their respective claims.

In order to prove his case, Plaintiff himself got his statement recorded as PW1 and tendered in evidence his affidavit Ex.PW1/A in which he repeated on oath his case as contained in the plaint. Thereafter, the evidence of the plaintiff was closed.

5. In rebuttal, defendant no. 1 Gurdial Singh himself stepped into witness box as DW-1 and submitted his affidavit as Ex.DW1/A in which he reiterated the version of the defendants as given in the written statement. The defendants further examined Surjit Singh as DW2, who stated that the disputed land is in possession of the defendants since 2014 and when the defendants tried to give share of land (should be produce) to the plaintiff, he refused to accept the same. The counsel for the defendants tendered in evidence documents Ex.D1 and Ex.D2 and then closed the evidence.

6. After hearing the learned counsel for the parties, the trial Court decided all the issues in favour of the plaintiff and against the defendants. Resultantly, the suit of the plaintiff was decreed with costs finding the plaintiff entitled for possession of land in dispute and defendants were directed to give possession of the land to the plaintiff within two months. The plaintiff was further found entitled to recovery of

amount of 16 quintal wheat crop from the year 2014 till delivering the possession of land by the defendants. Such judgment and decree were passed on 7.8.2018

7. Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Hoshiarpur, which was assigned to learned Additional District Judge, Hoshiarpur, who vide judgment and decree dated 23.3.2022 dismissed the appeal affirming the judgment and decree passed by the trial Court.

8. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants have preferred the present regular second appeal before this Court.

9. I have heard learned counsel for the appellants besides going through the record.

10. Although the plaintiff had not proved in evidence any document to show that he had given the land on THEKA/CHAKOTA to the defendants in the year 2011-2012 @ Rs.60,000/- per month, or that the defendants failed to pay any CHAKOTA despite repeated demands by the plaintiff, or that the defendants neither paid the CHAKOTA amount nor delivered the vacant possession.

But then the defendants in the written statement filed by them and during the course of their evidence before the trial Court have admitted taking the land for cultivation from the plaintiff orally for a period of 10 years starting from sowing of the crop of Hari 2014 on share produce basis stating that lease was extendable further by mutual consent of the parties and plaintiff instead of receiving his half share of the

produce for the crop of Hari 2014, asked the defendants to vacate the land. Therefore, a clear admission is there on the part of defendants regarding they being in possession of land belonging to the plaintiff and the nature of their possession being as tenant on payment of CHAKOTA/BATAI. They also concede that the plaintiff has not taken any CHAKOTA/BATAI from them.

11. As per law a fact which is admitted need not be proved and admission is best type of evidence. Therefore, both the Courts below relying upon such admissions made by the defendants have found merit in the case of the plaintiff and the suit filed by the plaintiff was decreed. The trial Court was fully justified in decreeing the suit of the plaintiff and learned Additional District Judge, Hoshiarpur had rightly dismissed the appeal filed against the judgment and decree passed by the trial Court. With concurrent findings being there in favour of the plaintiff and against the defendants and with no substantial question of law or fact arises in this appeal, the regular second filed by them is doomed for failure.

12. Thus I do not find any illegality or infirmity in the judgments passed by the Courts below. Rather the same are based upon proper appraisal and appreciation of evidence and correct interpretation of law.

13. Finding no merit in the appeal, the same stands dismissed.

2.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No