

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

**RSA-498-2020(O&M)
Decided on:-23.08.2023**

Hanuman

....Appellant...

vs.

Sarbati Devi and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashwani Bakshi, Advocate for the appellant.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 24.02.2015 and 17.09.2019 passed by the Courts below, whereby a suit for symbolic possession by way of pre-emption, filed at the instance of appellant-plaintiff, was dismissed.

2. Briefly stating, appellant-plaintiff claiming himself to be a '*gair marusi*' tenant over land measuring 2 kanals forming 1/3rd share of land falling in Khewat No.308, Khatoni No.676, Khasra Nos.44//13/2(6-0), situated within the revenue estate of village Adampur, Tehsil Adampur, District Hisar, filed a suit for symbolic possession by way of pre-emption while assailing the sale deed dated 26.05.2011, executed in favour of respondents-defendants.

3. In response, respondents-defendants appeared and filed their written statement while submitting that the appellant-plaintiff was never inducted as a tenant in the property in question and thus, he had no right to seek pre-emption qua the suit property and the same was validly sold in their

favour vide sale deed dated 26.05.2011.

4. The trial Court vide judgment and decree dated 24.02.2015, dismissed the suit filed by the appellant-plaintiff.

5. Aggrieved thereof, appellant-plaintiff filed first appeal, which also came to be dismissed vide judgment and decree dated 17.09.2019 passed by the first Appellate Court.

6. Assailing the aforementioned judgments and decrees, learned counsel for the appellant submits that the possession of the appellant over the land in question was sufficiently proved and corroborated from the entries made in the *khasra girdwari*, wherein he was recorded as tenant being '*gair marusi*' and even in the column of rent, there was entry of 1/3rd *batai* and thus, the suit was required to be decreed. No other argument has been raised.

7. Having heard learned counsel for the appellant and gone through the paper book, I am unable to find substance in the submissions made on behalf of the appellant.

8. In the present case, the right of pre-emption has been claimed on the basis of appellant-plaintiff being a '*gair marusi*' tenant. For the purpose of establishing the relationship of landlord and tenant, the very fundamental ingredient is the payment of rent. From the evidence available on record no document at all has been produced or proved from the side of appellant-plaintiff so as to establish payment of 1/3rd *batai* to the original owners. In the absence thereof, merely on the basis of entry made in the column of rent to the extent of 1/3rd *batai*, finding as regards relationship of landlord/tenant cannot be recorded in favour of appellant-plaintiff. Even, no

receipt of payment of rent has been proved on record by appellant-plaintiff, as the relationship of landlord and tenant can only be proved by establishing agreement of tenancy between the parties and thus, the mere entries showing the appellant-plaintiff to be a “*gair marusi*” therebeing no proof of payment of rent cannot be treated to be as confirmation towards his right of being a tenant over the property in question. In fact, a perusal of record shows that the appellant-plaintiff was just trying to draw benefit of the entries made in the revenue record, which were primarily showing him as ‘*gair marusi*’, merely being one of the successors of the three co-sharers, namely Sohan Singh, who happened to be the father of the appellant-plaintiff.

9. Accordingly, in view of the discussion made hereinabove, finding no illegality and perversity in the judgments passed by the Courts below, the present appeal is hereby dismissed.

Pending application(s), if any, shall stand(s), disposed of.

23.08.2023

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No