

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

RSA-1004-1992 (O&M)

Date of decision: 25.01.2023

Usha Devi and others

...Appellants

Versus

Harish Chander and others

...Respondents

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

Present: None.

H.S. MADAAN, J. (Oral)

Notices have been issued to both the parties. Neither any appellant/LRs of appellants nor any respondent or LRs of respondents has put in appearance either in person or through counsel. Since the case relates to the year 1992, I do not find it proper to adjourn it further, rather, I proceed to decide it after going through the record.

2. Briefly stated facts of the case are that plaintiff Harish Chander had brought a suit against defendants Puran and others, seeking a decree for permanent injunction, restraining the defendants from dispossessing the plaintiff from the property in question situated within revenue estate of Tehsil Rewari, District Mohindergarh and or from interfering in peaceful possession of plaintiff over such property. The plaintiff has averred that if during pendency of the suit, the defendants succeed in ousting him from the suit property, then a decree

for possession may be granted.

According to version of the plaintiff, he is in possession of the suit property as 'gair marusi' tenant, he is residing with his family at Chah Sangi Wala located in the suit land. Defendants No. 4 to 9 got effected the revenue entries in their favour in connivance with the halqa patwari. The defendants threatened to dispossess the plaintiff illegally and forcibly from the suit property on the basis of such entries, giving rise to a cause of action to the plaintiff to bring the suit in question.

3. On being given notice, the defendants appeared and filed a written statement, contesting the suit. They have raised various legal objections. On merits, they have contended that the plaintiff is no longer in possession of the property in dispute. According to the defendants, the plaintiff did not cultivate the suit land as tenant under the defendants. As a matter of fact, with regard to the suit land, the defendant No.1 is owner in possession of 04 marlas on the basis of sale deed dated 11.04.1980, lease deeds dated 17.08.1978 and 22.01.1981 and agreement dated 11.04.1980 executed by Sawatri Devi and Kalawati etc., and he is using the said piece of land as ingress and egress to his brick kiln. The defendants prayed for dismissal of the suit.

4. Plaintiff filed replication, controverting the allegations in the written whereas reiterating the averments in the plaint.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is the tenant of the suit land under defendants No.4 to 9? OPP.
2. Whether the suit is not maintainable as alleged in preliminary objection No.1 of written statement of defendant No.1?OPD.
3. Whether the plaintiff is estopped from his own act and conduct and is not having any locus standi to file the present suit? OPD-1.
4. Relief.
6. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.
7. After hearing arguments, the trial Court of Sub Judge Ist Class, Rewari, gave verdict with regard to issue No.1 in favour of the plaintiff and against the defendants holding that he is 'gair marusi' tenant upon the land under defendants No.4 to 9; issue No.2 was decided against the defendants holding that the suit was maintainable; issue No.3 was decided holding that defendants could not show as to how the plaintiff is estopped by his own act and conduct from filing the suit. Vide judgment dated 27.11.1986, the suit was decreed in favour of the plaintiff and against the defendants, restraining the defendants from dispossessing and from interfering in peaceful possession of plaintiff over the property in question.
8. The judgment and decree passed by the trial Court were

challenged by defendants No.4 to 9 by way of filing an appeal before District Judge, Rewari, that appeal was assigned to Addl. District Judge, Rewari, who vide judgment and decree dated 28.01.1992, dismissed the appeal, leaving the defendants still dissatisfied and they have approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiff who had put in appearance through counsel initially. Subsequently, there has not been any representation on behalf of any of the parties.

9. After going through the record, I find that the suit which was decreed in favour of the plaintiff was for grant of permanent injunction. Both the Courts below considering the pleadings of the parties and after analyzing the evidence brought on file by them had found the version of the plaintiff that he is in possession of the suit land as 'gair marusi' tenant as correct. It was observed that the defendants No.4 to 9 had wrongly got the revenue entries corrected in their favour in connivance with the halqa patwari and on strength thereof, the defendants tried to oust the plaintiff from the suit land, which they could not do. The inference drawn by the Courts below is correct. The defendants could not possibly use wrong and illegal means to get the possession of the suit land from the plaintiff, although, nothing prevented them from taking recourse to law to obtain possession from the plaintiff, if so desired and so advised.

10. With concurrent findings being there in favour of the plaintiff given by the trial Court as well as Ist Appellate Court with

which I do not see any reason to differ, the Regular Second Appeal filed by the defendants comes out to be without merit. No substantial question of law arises in this appeal. The appeal stands dismissed accordingly.

25.01.2023
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No