

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA 1089 of 2005 (O&M)

Date of decision : 2.2.2023

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Chhotu

.....Appellant

vs.

Ronki Ram and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None for the appellant.

Mr. Arvind Bansal, Advocate for respondents No. 1 to 15,
17 to 28 and 30 to 36

Mr. Hardeep Singh Dhillon, Advocate for
respondents No.39 and 40

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H. S. Madaan, J.

1. Briefly stated, facts of the case are that plaintiffs – Ronki Ram and others, claiming themselves to be owners of suit land measuring 25 Kanals 16 Marlas, situated at village Jurasi Kalan, Tehsil Pehowa, District Kurukshetra, had brought a civil suit against defendants Chhotu son of Narain, Niab son of Kanahiya and Jagir Singh son of Dalip, all residents of village Jurasi Kalan, Tehsil Pehowa, District Kurukshetra, seeking possession with consequential relief of permanent injunction.

2. On getting notice, only defendant No.2 put in appearance and filed written statement contesting the suit raising various legal objections, on merits contending that one of the co-sharers, namely Amar Nath son of Sh. Raja Devi had leased out the land measuring 8 Kanals to defendant no.2 on 27.8.1970 for a period of 99 years, starting from 26.8.1970 and going up to 25.8.2069, for a consideration of Rs.2,000/-. The lease deed was got registered in the office of Sub Registrar, Guhla. Defendant No.2 came into possession of that land as lessee, therefore question of defendants having taken forcible possession of the land from the plaintiff on 27.10.2000 did not arise. The written statement filed by defendant No.3 was almost on the similar lines, as of defendant No.2

3. Plaintiffs filed replication controverting the allegations in the written statement and reiterating the averments made in the plaint. From the pleadings of the parties, following issues were framed by the trial Court of Additional Civil Judge (Senior Division), Pehowa :-

- 1) Whether the plaintiffs are the owners of the suit land and are entitled for the possession of the same as alleged? OPP
- 2) Whether the the suit is not maintainable in the present form? OPD
- 3) Whether the plaintiff is estopped from filing the suit by his own act and conduct ? OPD
- 4) Whether the present suit is time barred ? OPD

5) Whether the plaintiff has no locus standi nor cause of action to file the present suit? OPD

6) Relief.

4. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. After hearing the arguments, the trial Court vide judgment dated 17.2.2004, decreed the suit of the plaintiffs partly, to the effect that plaintiffs are owners of the land measuring 8 Kanals out of the suit property and are entitled to possession of the same from Chhotu son of Narain. Such defendant was directed to vacate the suit land within a period of one month, failing which the plaintiffs would be at liberty to claim possession from defendant Chhotu only, as per law, at the costs of the defendant, whereas the suit of the plaintiffs with regard to remaining land was dismissed.

6. Feeling aggrieved, defendant – Chhotu filed an appeal before the District Judge, Kurukshetra, which was assigned to Additional District Judge, Kurukshetra, who vide judgment dated 29.11.2004, dismissed the appeal, with the modification that the trial Court had wrongly believed 2 Kanals area of land comprised in Rect. No. 48, Killa No. 3/2 as part of suit land. However, the same only formed part of lease land measuring 8 Kanals in total. Therefore, the suit was decreed qua land measuring 6 Kanals in total bearing Rect. No 48, Killa No. 3/1.

7. Still feeling dissatisfied, Chhotu has filed the present regular appeal, notice of which was given to the respondents. Only respondents No. 1 to 15, 17 to 28, 30 to 36, 39 and 40 had opted

to put in appearance through counsel. It may be mentioned here that learned counsel for the appellant has not put in appearance for the last several successive dates and the appeal being of the year 2005, I proceed to decide the same with the assistance provided by learned counsel appearing for the respondents and going through the record.

8. The trial Court, in its judgment has concluded that predecessor in interest of the plaintiffs were owners of the suit land to the extent of 3/4th share out of 34 Kanals 8 Marlas and out of this suit land some part is in possession of several people as 'Gair Marusi tenant' and 8 Kanals land therefrom is shown to have been leased by Amar Nath son of Smt. Rajo Devi daughter of Smt. Ramji Dass to Chhotu son of Narain son of Ganga Ram, resident of Jurasi Kalan and Guhla for a period of 99 years for a consideration of Rs.2,000/- vide registered lease deed dated 26.8.1970. The entries in the revenue record show such defendants as 'Gair Marusi tenant', whereas defendants themselves claim to be co-sharer of land bearing Rect. No. 17, Khewat No. 69, Killa No. 24/2, Killa No. 21 and Killa no.14. In the Jamabandi for the year 1999-2000, Exhibit D-1, the defendants have been shown to be co-sharers in the column of ownership, as such it was clear that Ramji Lal etc. were Dholidars over the portion of the land and Amar Nath son of daughter of Ramji Dass, leased a portion of the suit land to Chhotu son of Narain, to the extent of 8 Kanals out of the suit property. The trial Court had observed that a Dholidar cannot violate the condition of Dholi and cannot exceed his powers and in this case,

Amar Nath, the successor in interest of Ramji Dass, who was a Dholidar, had leased the land of Dholi for a period of 99 years and in that case, land of Dholi has to revert to the original owners. It was further observed that Dholi land cannot be leased for a period of 99 years and it amounts to permanent alienation, rendering the transaction as void ab-initio. In support of this contention, reliance was placed upon judgments ***Gram Panchayat Kanpur vs. Shital Dass (Financial Commissioner Haryana), 1982 PLJ 457*** and ***Dharma vs. Smt. Harbai (P&H) 1976 PLJ 617.*** Under that circumstances, the plaintiffs being owners, were held to be entitled to the possession of suit land measuring 8 Kanals.

9. In appeal, while disposing of the matter, learned Appellate Court of Additional District Judge, Kurukshetra, came to the conclusion that originally appellant claimed himself to be a co-sharer in the suit land but at the same time also pleaded in possession of part of suit land as a lessee under Amar Singh Dholidar. Since under law, a Dholidar is not competent to make alienation to the land holding which he received in the Dholi and also during subsistence of Dholi tenure, the impugned lease of the part of suit land was void ab initio.

10. I am of the view that findings recorded by the Court below do not suffer from any error, rather those are based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no reason to take a different view in the matter and to deny relief to the plaintiffs qua 6 Kanals of land, as directed by the Ist Appellate Court of Additional District Judge,

Kurukshetra.

11. As a matter of fact, no substantial question of law arises in the present appeal.
12. The appeal is found to be without any merit and the same stands dismissed accordingly.

2.2.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No