

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4212 of 2014 (O&M)
Date of Order: 19.07.2023

Harinder Singh

.Appellant

Versus

Gurmail Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ishwar Lal, Advocate, for the appellant.
Mr. A.K.Goel, Advocate, for the respondents.

ANIL KSHETARPAL, J

1. Heard the learned counsels representing the parties at length.
2. In the considered opinion of the Court, the detailed facts are not required to be noticed as this Court has come to a conclusion that the matter is required to be remitted back to the trial Court for deciding the pivotal and the most important issue which has been overlooked by both the courts below.
3. The plaintiffs while filing the suit claimed that they are the owners in possession of the property as tenants after having inherited the tenancy from their father Sh. Pritam Singh. They sought relief of permanent injunction.
4. The defendant claims to be the owner of the property on the basis of a registered sale deed. He claims that the plaintiffs are not in the possession of the property and they were never inducted as tenants. The defendant while filing the counter claim prayed for a direction to correct the revenue entries reflecting the plaintiffs to be in possession of the property.

5. The learned trial court framed the following issues for adjudication:-

- “1. Whether the plaintiffs are entitled for permanent injunction as prayed for?OPP
2. Whether the plaintiffs have no locus standi to file the present suit?OPD
3. Whether the plaintiffs have not come to the court with clean hands?OPD
4. Relief.”

6. The crucial issue that requires adjudication by the Court pertains to the tenancy of the plaintiffs or their predecessors. On the one hand, the plaintiffs claim to be in possession as tenants, whereas on the other hand the defendant (appellant herein) claims that he is in possession and the plaintiffs were never in possession of the disputed property as tenants.

7. The creation of tenancy can be on the basis of a contract between the parties. Reliance in this regard can be placed on the judgment passed in **Umesh Kumar vs. Anil Kumar and another (Regular Second Appeal No.234 of 1997 and other connected cases, decided on 27.03.2014).**

Some times the tenancy can be created by a statute. In this case, there is a lack of clarity regarding the identity of the person who established the tenancy, the timing of its creation, and the specific terms under which it was granted to the predecessor in interest of the plaintiffs, namely, Sh. Pritam Singh. The entire case of the plaintiffs is based upon the facts that there is an entry in the revenue record showing Sh. Pritam Singh to be in the possession of the said property. The revenue record maintained by the government officials carry a presumption, however, such presumption is rebuttable and

the evidence can be given to prove if the facts are otherwise. It is the categorical stand of the defendant (the appellant) that the plaintiffs are not in possession of the property. In fact, from the reading of the judgments passed by both the courts below, it is evident that neither any distinct issue on the counter claim was culled out nor the court decided the counter claim by discussing the evidence. In fact, the plaintiffs had sought only relief of permanent injunction. Whereas, in the counter claim the defendant claimed that the entries in the revenue record reflecting the plaintiffs to be in possession are incorrect.

8. In these circumstances, the crucial issue which requires adjudication by the Court is “Whether Sh. Pritam Singh was ever inducted as a tenant on the land? This significant issue has not been at all examined by the courts below. This issue could have been framed either in the suit or in the counter claim.

9. As per Order XIV of the Code of Civil Procedure, 1908, the Court is required to cull out a distinct issue on each material proposition affirmed by one party and denied by other. Rule 1(4) provides that the issues that arise are of two kinds; issue of fact or issue of law. In fact, the courts below have neither framed the proper issues nor have answered the most crucial issue. The appropriate course for the courts would have been to treat the counter claim as the primary litigation in order to determine the substantive rights of the parties.

10. The re-trial of the entire case is considered necessary. In absence of a proper issue, the parties had no chance of leading the evidence to this effect. If this Court proceeds to decide the matter on the basis of the

evidence already available, the prejudice may be caused to the parties. If this court only calls for a report from the trial Court after culling out the additional issue, the parties would not get an opportunity to file the first appeal.

11. Keeping in view the aforesaid facts and discussions, the judgments and decrees passed by the courts below are set aside. The case is remitted back to the trial Court to cull out the proper issues, grant opportunities to the parties to lead further evidence, if prayed for and thereafter, proceed to adjudicate the dispute.

12. With these observations, the Regular Second Appeal is disposed of.

13. Parties through their learned counsels are directed to appear before the trial Court, on 10.08.2023.

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

July 19, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO