

RSA No.4932 of 2018 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(108)

RSA No.4932 of 2018 (O&M)

Date of Decision: 03.10.2023.

Satnam Singh

.....Appellant

Versus

Poonam and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Ms. Nancy Vashishta, Advocate for
Mr. Namit Khurana, Advocate
for the appellant.

VIKRAM AGGARWAL, J. (ORAL)

1. This is plaintiff's second appeal. A suit for possession was filed by the appellant-plaintiff by way of pre-emption which was dismissed by the Court of the Civil Judge (Junior Division), Bilaspur, vide judgment and decree dated 01.07.2014. The first appeal preferred against the said judgment and decree was also dismissed by the Court of the District Judge, Yamuna Nagar, vide judgment and decree dated 13.03.2018. For the sake of convenience, the parties shall be referred as per their original status.

2. The dispute is with regard to land measuring 1 Kanal 5½ Marlas (fully described in the plaint) situated in Village Sultanpur, Tehsil Bilaspur, District Yamuna Nagar (hereinafter referred to as the disputed land). The disputed land was purchased by the defendants vide sale deed dated 01.07.2009. The plaintiff claimed to be a tenant over land measuring 7 Kanals 11 Marlas. He filed a suit to pre-empt the sale of the disputed land being a tenant.

3. The stand of the defendant was that the plaintiff was not a tenant and that even otherwise partial pre-emption was not permitted.

4. The trial Court framed the following issues from the pleadings of the parties:-

1. *Whether the plaintiff is entitled to the possession of the suit land as alleged? OPP.*
2. *Whether plaintiff is entitled to the relief of permanent injunction sought? OPP*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether plaintiff has no locus standi to file the suit? OPD*
5. *Relief.”*

5. Parties led their respective evidence.

6. The trial Court dismissed the suit holding that the plaintiff had not been able to prove that he was a tenant over the disputed land. The first appeal was also dismissed leading to the filing of the present second appeal.

7. I have heard learned counsel for the appellant-plaintiff and have perused the paper book.

8. Learned counsel for the appellant has submitted that both the Courts below erred in non-suiting the appellant-plaintiff. Learned counsel referred to the findings recorded by the Courts below and submitted that the Courts had not examined the matter from the correct perspective. It has been contended that it was duly found by the First Appellate Court that as per the revenue record, the plaintiff was recorded as a *Gair Marushi* in the disputed land. Under the circumstances, there was no occasion for the Courts to non-suit the plaintiff.

9. I have considered the submissions made by learned counsel for the appellant-plaintiff.

10. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon’ble

Apex Court including *Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545*, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in *Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92* respectively.

11. Reverting to the facts of the present case, the plaintiff claimed to be a tenant in the disputed land. It was duly noticed by the First Appellate Court that as per the jamabandi for the year 2004-2005, the plaintiff was recorded to be in possession of Khasra No.35//5/2 as a *Gair Marusi*. It was found by the Court that the Girdawari was changed in Kharif 1988 in favour of the plaintiff without there being any order/authorization to make the said change. It was found that no evidence had been produced to even suggest that some procedure had been adopted while change of entries of Kharif 1988 in favour of the plaintiff. Still further, it was found by both the Courts below that the plaintiff had not been able to produce any documentary evidence to prove that he was a tenant in the disputed land and its mere depiction as a *Gair Marusi* could not create tenancy. In Column No.9 of jamabandi for 2004-2005 (Ex.P-1), the entry which was found to be recorded was "Batai 1/3rd Billa Kharach Sahayak Kheti." The words Sahayak would mean that the plaintiff was a helper and not a tenant. The Courts below therefore recorded current findings that the plaintiff had not been able to prove his status of a tenant or that the status of the plaintiff described in the jamabandi to be

that of a helper was wrong. The First Appellate Court examined the matter from all possible angles and recorded findings in which no illegality has been found.

12. This Court does not find any reason to interfere in the aforementioned findings of facts recorded by the Courts below.

In view of the aforesaid, I do not find any merit in the present appeal and the same is accordingly dismissed.

October 03rd, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*