

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.RSA-1060-1990 (O&M)

Munshi and others

....Appellants

Versus

Ram Singh

..Respondent

2.RSA-1061-1990 (O&M)

Munshi and others

....Appellants

Versus

Veer Singh

..Respondent

3.RSA-1062-1990 (O&M)

Sat Pal and another

....Appellants

Versus

Dalip Singh and another

..Respondents

4.RSA-1063-1990 (O&M)

Munshi and others

....Appellants

Versus

Gurbachan Singh

..Respondent

5.RSA-1064-1990 (O&M)

Sat Pal and another

....Appellants

**RSA-1060-1990 (O&M)
and other connected cases**

2

2024:PHHC:024169

Versus

Waryam Singh (deceased) through his LRs

..Respondent

Reserved on : 12.02.2024

Date of decision: 20.02.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. H.S.Kasan, Advocate for the appellants

Mr. G.S.Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for the respondent
in RSA-1061-1990

ANIL KSHETARPAL, J

1. A batch of five connected Regular Second Appeals has come up for disposal.

2. The appellants, in all the five appeals, are represented whereas the respondent in RSA-1061-1990 is represented by a senior counsel. As per the office report, in the remaining appeals, the respondent(s) have been served, however, they remain unrepresented. The issue which arises for consideration is common and identical. In fact, five different first appeals were disposed of by the learned Additional District Judge, simultaneously on 20.02.1990, by passing separate but identical judgments.

3. The common issue which arises for consideration in all the five appeals is as to “whether an entry in revenue record-jamabandi reflecting possession as ‘*Gair Marusi*’ without corresponding entry in the column of rent payable, in cash or kind, is sufficient to declare relationship of landlord and tenant between the parties particularly when

both the parties deny the same not only in pleadings but also in evidence?

4. In order to comprehend the issue involved in these cases, some relevant facts, in brief, are required to be noticed.

5. In RSA-1060-1990, the plaintiffs (appellants) filed suit for possession with respect to the land measuring 8 kanals comprised in Rect.19 Killa no.3 in RSA-1061-1990, the appellant filed suit for possession of the land measuring 8 kanals comprised in Rect. No.119, Killa no.3. In RSA-1062-1990, the appellants filed suit for possession with respect to 12 kanals land comprised in Rect. No.37 Killa no.4min 7 min 14 min. In RSA-1063-1990, the appellants filed suit for possession with respect to 16 kanals comprised in Rect. No.103 Killa no.3 and 8. In RSA-1064-1990, the appellants filed a suit for possession with respect to 16 kanals land comprised in Rect. No.37 Killa no.2 and 9.

6. It is the case of the appellants, who were plaintiffs in the trial court, that they are owners of the property and defendants have no right, title or interest in the same who are in illegal possession of the suit land. Consequently, the appellants are entitled to decree for delivery of possession. In all the five appeals, identical stand was taken by the defendants. It was asserted that the different defendants in all the suits were owners in possession for the last 25 years and they have never paid any lease money to anybody. They also claim that the civil court has no jurisdiction. After the plaintiffs were permitted to file replication, the trial court, in RSA-1060-1990 identified the following issues, which require adjudication:-

“1) Whether the plaintiffs are the owner of the suit land as alleged? OPD.

2) Whether the suit is not maintainable in the present form? OPD.

3) Whether the plaintiffs have got no locus standi to file the present suit? OPD.

4) Whether the defendants have become the owner of the suit land by an adverse possession? OPD.

5) Whether the suit is barred by limitation? OPD.

6) Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.

7) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.

8) Whether the civil court has got no jurisdiction to try the present suit? OPD.

9) Relief.”

7. The trial court, on appreciation of evidence, in all the five suits, arrived at the conclusion that the plaintiffs (appellants herein) are owners of the property and defendants have failed to prove that they have perfected their title after the prescribed period by way of adverse possession. Thus, as many as five identical decrees for possession were passed. Five separate appeals were filed, which were decided by the First Appellate Court on the same day. The First Appellate Court also came to the conclusion that the appellants are owners of the property and defendants (respondents herein) have failed to prove that they have perfected their title by prescription of time i.e adverse possession. However, the First Appellate Court held that the respondents are tenants holding over, therefore, they can be ordered to be evicted only in accordance with the provisions of Punjab Tenancy Act, 1887 read with the provisions of the Punjab Security of Land Tenure Act, 1953.

8. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the

requisitioned trial court record, which is available in the digital form.

On the request of the Court, the learned counsel representing the parties have also filed their respective synopsis.

9. On one hand, the learned counsel representing the appellants submits that the respondents never claimed that they are in possession as tenants. He submits that there was neither any issue nor any evidence was led by the respondents to prove that they are tenants in possession of the property. While submitting that the tenancy can either be result of bilateral contract or statutory contract, he submits that the respondents have failed to prove any of the aforesaid two.

10. On the other hand, the learned senior counsel representing the respondent in RSA-1061-1990 submits that denial of relationship in the written statement by the defendants is not sufficient for forfeiture of the tenancy. Hence, no interference in the judgment and decree passed by the First Appellate Court is required.

11. This Court has considered the submissions made by the learned counsel representing the parties.

12. This Court has examined the trial court record. The defendants, while filing the written statement, in all the five cases, have taken a specific stand that they have never entered possession of the land, after taking it on lease, from any body including the Gram Panchayat. When defendant-Ram Singh in RSA-1060-1990 appeared as DW1 he reiterated this fact. During cross examination, he stated that he never took the land on lease from anybody. He also examined Jagir Singh DW2, former Sarpanch of the Gram Panchayat, who also deposed

that the Gram Panchayat never leased out the property in favour of the respondents. From the issues, which were culled out by the trial court, it is evident that there was no issue with regard to the fact that the defendants are tenants or not.

13. The revenue record in the shape of jamabandis for the year from 1957-58 till 1978-79 have been produced. Undoubtedly, there is an entry of Gair Marusi in column no.4, however, there is no corresponding entry in column no.9/10 with regard to the lease amount in cash or kind. In jamabandi for the year 1963-64, there is only an entry of lagan, which is tax on the agricultural land, which was, at one point of time, collected by the State. Same entry continues in the jamabandi for the years 1968-69 and 1973-74. However, there is no entry of rent payable in cash or kind to the owners

14. It has come on record that previously this entire land belonged to proprietors of the village, however, on enactment of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter referred to as '1961 Act) the land was mutated in favour of the Gram Panchayat. However, Sh.Dalip Singh filed a suit in a representative capacity on behalf of the proprietary body of the village seeking declaration that out of the total land, 3/4th will not rest in the Gram Panchayat. The aforesaid suit was decreed. Subsequently, the proprietors sought partition of the land. After completion of the partition proceedings, the suit land fell in the share of the plaintiffs. The defendants at one stage filed writ petitions in the High Court claiming to be in possession as tenant, which were dismissed as premature on

26.10.1985. Undoubtedly, denial of tenancy of agricultural land does not amount to forfeiture of tenancy. However, the court is not entitled to make out a new case for the defendants. To recapitulate the facts, it may be noticed that it is categoric case of the defendants that they have never been inducted as tenants by anybody and they have never taken the land on lease from anyone including the Gram Panchayat. In such circumstances, the finding arrived at by the First Appellate Court is based upon the plaintiff's case nor of the defendants. The First Appellate Court was not correct in making out a new case. Additionally, the First Appellate Court has assumed that the respondents were tenants of the Gram Panchayat. The lease of the property by the Gram Panchayat is regulated by the provisions of the 1961 Act and as applicable to the State of Haryana and the Punjab Village Common Land (Regulation) Rules, 1964 (hereinafter referred to as '1964 Rules'). After the expiry of the lease period, the tenant of the Gram Panchayat is not entitled to protection under the Punjab Tenancy Act read with provisions of the Punjab Security of Land Tenure Act. The afore-noted two Acts are not applicable to the Panchayat land. After expiry of the leases period, which can at the most extend to the period specified in Rule 6 of 1964 Rules, the status of the tenant is of an unauthorized occupant. Thus, in partition proceedings, the property came to the share of the plaintiffs. The status of the defendants will not improve. Their status will not stand elevated to that of a statutory tenant.

15. Keeping in view the aforesaid facts and discussion, the judgment of the First Appellate Court to the aforesaid extent is set aside

and that of the trial court is restored. The respondents in RSA-1060, 1062, 1063 and 1064 shall have liberty to file application for recall if they feel aggrieved. With these observations, all the appeals are allowed.

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

20.02.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE