

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1072 of 1990 (O&M)

Har Chand (Now Deceased) through his Legal Representatives
... Appellant(s)

Versus

State of Haryana
... Respondent(s)

AND

2. Regular Second Appeal No. 1089 of 1990 (O&M)

Ram Singh and Others
... Appellant(s)

Versus

State of Haryana
... Respondent(s)

DATE OF DECISION: 28.02.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. S.K.Jain, Mr. Deepak Kumar Jain and
Mr. Akshay Jain, Advocates,
for the appellant(s) (In RSA-1072-1990).

Mr. Tara Chand Dhanwal, Advocate
for the appellant(s) (In RSA-1089-1990).

Mr. Jaspal Singh Pannu, Assistant Advocate General,
Haryana, for the respondent.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and
Haryana and Union Territory, Chandigarh is governed by Section 41 of the
Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil
Procedure, 1908, as held by a five Judge Bench of the Supreme Court in

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Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.

2. With the consent of the learned counsel representing the parties, two connected appeals shall stand disposed of by this common judgment.

3. In both the connected appeals, the plaintiffs (one each in two appeals) assail the correctness of the concurrent findings of fact arrived at by both the Courts below while partly dismissing their respective suits.

4. In both the suits, the plaintiffs claim to be the lessees in possession under the State of Haryana. Their entire case is based upon the entry in the revenue record reflecting them to be in possession as *Gair Marusi*. The State of Haryana has contested the case while asserting that the land was given on yearly lease to the members of the scheduled caste from the year 1978-79 and the plaintiffs are not in possession of the land. It has also been pleaded that the suit filed by the plaintiffs is barred by the principle of *res judicata*. Both the Courts below, on appreciation of evidence, have concurrently found that though the plaintiffs are proved to be in possession, however, the lease in their favour is not proved. Hence, both the Courts below have held that they are in unauthorized possession and they shall not be dispossessed except in due course of law.

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book, along with the requisitioned record which is available in the digital form.

6. The learned counsel representing the appellants in both the appeals jointly state that as per the revenue record, there is an entry

reflecting the plaintiffs to be lessees in possession of the land. They submit

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that both the Courts below have erred in partly dismissing their suits.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. The tenancy can either be the result of a bilateral contract between the parties or there is a statutory provision which creates the relationship of landlord and tenant. It is not the case of the plaintiffs that they were inducted by the State of Haryana or its officials as tenants. The plaintiffs are not even claiming that they were orally inducted as tenants. They have also failed to refer to any statutory enactment to the effect that they are the lessees over the land. The entries in the revenue record carry rebuttable presumption. Before the Court comes to a conclusion that the relationship of landlord and tenant is proved, it must be established that the tenancy was either created by a bilateral contract or by a mandate of the statute. In the absence thereof, it would not be for the Court to grant declaration to the plaintiffs.

9. Keeping in view the aforesaid facts and discussion, the result is inevitable. Hence, both the appeals are dismissed.

10. The miscellaneous application(s) pending, if any, in both the appeals shall stand disposed of.

**(Anil Kshetarpal)
Judge**

February 28, 2024
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No