

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1625-1993

Reserved on: 22.04.2024

Pronounced on: 02.05.2024

2024:PHHC: 060613

JOGINDER AND ANOTHER

. . . . APPELLANTS

Vs.

RAM NATH AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. Ashok Gupta, Advocate for the appellants.

Mr. Ivneet Singh Pabla, Advocate, for respondent No.1.

DEEPAK GUPTA, J.

This Regular Second Appeal is directed by the plaintiffs of the case against the judgment and decree dated 05.06.1993 of the ld. First Appellate Court, whereby the judgment and decree dated 24.08.1988 of the ld. trial Court, decreeing the suit of the plaintiffs for permanent injunction, was reversed and the suit of the plaintiffs was dismissed.

2. In order to avoid confusion, parties shall be referred to as per their status before the ld. Trial Court.

3. Some admitted facts may be noticed first. One Nanak Chand was the owner of 159 kanals 6 marla of land besides some other immoveable property situated in Village Jindheri, detailed in para No.1 of the Plaint. By keeping 80 kanals 12 marla of land with him [*hereinafter referred to as 'the suit land'*], he (Nanak Chand) transferred rest of the land in favour of his brother Singh Ram. On the death of Singh Ram, his estate was inherited by his widow Smt. Ishro - defendant No.2 (*respondent N: 5 herein*) and two daughters namely, Angrejo and Naibo - defendants No.3 & 4, respectively

respondent N: 6 & 7 herein). Nanak Chand, on the death of his issue-less wife, contacted Karewa marriage with Smt. Norati, widow of one Sawan Ram. Smt. Norati brought with her, Ram Nath-defendant No.1, son from her previous marriage i.e. *pichhlaggoo* (son brought by the wife from the previous marriage). Nanak Chand bequeathed his property in favour of Ram Nath by virtue of a Will executed in the year 1972. Nanak Chand died on 16.11.1980.

4. Two plaintiffs Joginder and Sulekh Chand (*appellants herein*) and defendants No.5 & 6 Barkha Ram & Ajmer Singh (*respondent N: 3 & 4 herein*) are sons of Norata Ram and they claimed their possession over the suit land measuring 80 kanals 12 marla of Nanak Chand as tenants. They prayed for a decree of permanent injunction and to restrain defendants from interfering in their possession by alleging that the defendants were intending to dispossess them forcibly and illegally.

5. Defendants No.1 to 4 and 7 contested the suit. They denied the possession of the plaintiffs or that of defendants No.5 & 6 over the suit land and claimed that Nanak Chand, during his life time, was cultivating the suit land and that after his death, it is his son i.e. Ram Nath-defendant No.1, who was in possession of the land.

6. The trial Court held the possession of the plaintiffs on suit land on the basis of admission made by defendant No.1-Ram Nath in a previous litigation and decreed the suit. However, in appeal filed by defendant-Ram Nath, the Appellate Court found that entries in the revenue record were in favour of Nanak Chand and after his death in favour of Ram Nath, showing his possession over the suit land and that presumption of truthfulness was attached to the entries in the record of rights, which plaintiff has failed to rebut. It was further held by the Appellate Court that the purported admission

made by Ram Nath in the earlier litigation was duly explained and it was contrary to the facts. With these findings, the judgment of the trial Court was reversed and allowing the appeal, suit was dismissed.

7. Assailing the above said findings of the First Appellate Court in this regular second appeal, it is contended by the appellants (plaintiffs) that Id. Appellate Court misread and misunderstood the evidence on record, particularly the admission made by Ram Nath in the Civil Suit No.338 of 1983 titled 'Angrejo Vs. Barkha Ram', in which he had filed written statement, admitting the possession of the plaintiffs on the suit land and therefore, the Id. First Appellate Court wrongly reversed the judgment of the trial Court. Prayer has been made to set aside the judgment of the First Appellate Court and to restore that of the trial Court and decree the suit.

8. Needless to say that the respondents contested the appeal.

9. I have considered submissions of both the sides and have appraised the record carefully.

10. It has not been disputed before this Court that in the entire revenue record, it is Nanak Chand, who is recorded to be owner in possession of the suit land and after his death, it is Ram Nath, who is recorded to be owner in possession. As per Section 44 of the Punjab Land Revenue Act, 1887, presumption of truth is available in favour of the entries in the record of rights, though the said presumption is rebuttable.

11. In order to rebut the presumption, the plaintiffs simply relied upon an admission made by defendant No.1-Ram Nath in an earlier litigation. Before referring to the admission made by defendant No.1-Ram Nath in the earlier litigation, on which much emphasis has been laid by Id. counsel for the appellants - plaintiffs, it is relevant to note that plaintiffs claimed their

possession over the suit land in the capacity of tenant. The terms ‘tenant’, ‘landlord’ and ‘rent’ have been defined in Section 4 of the Punjab Tenancy Act, 1887. These read as under: -

“**Rent** - means whatever is payable to a land-lord in money, kind or service by a tenant on account of the use or occupation of land held by him.”

“**Tenant** - means a person who holds land under another person, and is, or put for a special contract would be, liable to pay rent for that land to that other person”

“**Landlord** - means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land”

12. It is, thus, clear that in order to claim possession as a *tenant*, it is required for the plaintiffs to show any contact between them and the landlord for the payment of *rent* in any manner whatsoever as defined in the term ‘*rent*’. In the present case, plaintiffs have utterly failed to produce any evidence, as to on what point of time or on what terms and conditions, they were inducted as tenant over the suit land. No evidence, whatsoever, is produced on file to show payment of *rent* to the landlord i.e. Nanak Chand during his life time or to defendant No.1-Ram Nath, after the death of Nanak Chand, at any point of time, in any kind i.e. cash, kind, batai etc. In the absence of any evidence regarding payment of rent, at any point of time, or in any form, even if it may be assumed for the sake of arguments, without holding so, that plaintiffs were in possession, they cannot be treated as a *tenant* over the suit land.

13. Proceeding further, apart from the oral evidence relied by the plaintiffs, there is nothing on record to support their claim regarding possession over the suit land. As noticed above that the only contention raised by counsel for the plaintiffs is based on the admission purported to have been made by defendant No.1-Ram Nath in an earlier litigation.

14. Perusal of the trial Court record would reveal that Smt. Angrejo and Smt. Naibo, daughters of Singh Ram, had filed civil suit N: 338 of 1983 titled 'Smt. Angrezo Vs. Barkha Ram and others' (*decided on 03.12.1984*) in the court of Senior Sub Judge, Kurukshetra, seeking decree of permanent injunction against Barkha Ram, Ajmer Singh, Joginder and Sulekha sons of Norata Ram (*i.e. plaintiffs and defendants N.2 & 3 of the present case*) and one Daler Singh by pleading therein that they (*Smt. Angrejo and Smt. Naibo*) along with their paternal uncle Nanak Chand were owner in possession of the land comprised in Khewat No.208, 231 & 245 as per Jamabandi for the year 1974-75 situated in village Jindheri and that after the death of Nanak Chand, they were cultivating the land as owners, with which defendants of that case had no concern. Initially Ram Nath (*defendant No.1 of this case*) was not impleaded as a party. Later on, said Ram Nath was impleaded as defendant No.6 and amended plaint (Ex.PIII) was filed and in response thereto, Ram Nath in his written statement Ex.PW3/1 pleaded in para No.4 as under: -

"That the contents of para No. 4 of the plaint are absolutely wrong, hence denied vehemently because the plaintiffs were never nor is now in possession of the land in dispute. Earlier the defendants No. 1 to 4 were cultivating the land in dispute under Shri Nanak Chand so long as he was alive, and after Nanak's death, the defendants No. 1 to 4 are cultivating the land in dispute now under the answering defendant who is owner of the land in dispute by virtue of a well aforementioned."

15. It is important to notice that the suit of Smt. Angrejo and Smt. Naibo was in respect of the land comprised in Khewat No.208, 231 and 245; whereas, the present suit is in respect of land measuring 80 kanal 12 marla comprised in Khewat No.219 and 256 as per details given in para No.1 of the plaint of present suit.

16. The appellants have failed to establish that the admission as made by the defendant No.1-Ram Nath in the previous litigation was in respect of the suit land pertaining to this case. Assuming for the sake of arguments that the admission of Ram Nath-defendant No.1 as aforesaid, was in respect of suit land of this case, this aspect has been considered at length by the Id. First Appellate Court, which has rightly referred to a decision of Hon'ble Supreme Court rendered in *Thiru John V Subramaniam and another Vs. Returning Officer and others*, AIR 1977 Supreme Court 1924, wherein it is held that an admission, if clearly and unequivocally made is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so" and until the presumption is rebutted, the fact admitted must be taken to be established.

17. It is, thus, clear that presumption regarding truthfulness to the admission purported to be made by Ram Nath is pitted against the presumption available to said Ram Nath regarding his possession over suit land, as recorded in his favour in the record of rights.

18. Ld. First Appellate Court has rightly held that it is necessary to look into the circumstances, in which the admission was made and also that the entire context, in which the admission was made, is required to be looked into. Ld. First Appellate Court has also referred to Para No.3 of the written statement Ex.PW3/1 in which it was submitted by Ram Nath : -

“That the contents of Para No.3 of the plaint are wrong hence denied. It is submitted that a family partition took place between Shri Nanak Chand and his brother Singh Ram, more than 2 decades ago and both the brothers were in possession of the land which fell to their respective shares since then.”

19. Ld. First Appellate Court then observed as under: -

“17. It is clearly mentioned in this para that more than two decades ago, both the brothers were in possession of the land, which fell to their respective share since then. The learned counsel for the appellant has submitted before me that the averments made in this para are in contradiction to the averments made in para No. 4 of the written statement and the written statement has to be read as a whole. If Nanak Chand and Singh Ram were in possession of the suit property, how could the plaintiffs alongwith Barkha Ram and Ajmer Singh be in possession of the suit property as tenants. This stand cannot be brushed aside because there are other circumstances on record which clearly reveals that admission made in the written statement with regard to the possession of the plaintiffs as tenants on the suit property was against the facts and for that reason, it has been rightly not supported by Ram Nath, when he appeared in the witness-box as DW1. He has given his own explanation which, according to the learned counsel for the tenants, is contrary to the stand taken in the written statement filed, where allegation of mis-representation has been made. Ram Nath has maintained that Nanak Chand and Singh Ram had been cultivating the land and the land owned by Nanak Chand was never cultivated by Joginder Singh, Sulekh Chand, Lakhan and Ajmer Singh. He further stated that he was presently cultivating the suit land. He further denied that he had stated in the written statement that land of Nanak Chand was cultivated by Joginder Singh, Sulekh Chand and Ajmer Singh. I have already discussed the entries of the revenue record, which clearly established that the Plaintiffs along with Ajmer Singh and Barkha Ram never cultivated the suit land. Again no payment of any rent to Nanak by them has been established on record. Thus, on the basis of the admission contained in para No. 4 of the written statement filed by Ram Nath (Exhibit P3/1), it cannot be concluded that the plaintiffs alongwith Ajmer and Barkha Ram were cultivating the suit land as tenants. The matter can also be looked into from another angle because in the suit instituted against Ram Nath, a compromise had been arrived at between the parties. That means, the averments made in the written statement filed by Ram Nath were not adhered to and the matter was compromised between him and the other party. No effort has been made to prove the copy of the compromise on record in that suit from the side of the plaintiffs in order to discredit the statement of Ram Nath. Rather, in para No. 6 of the plaint, it was admitted by the plaintiffs that compromise formed the basis of the judgment and decree-passed in civil suit instituted by Smt. Angrejo and Smt. Naibo against Barkha Ram etc. Under the circumstances, the learned trial Judge, in my considered view, wrongly rejected the suit of Ram Nath, Thus,

from the material on record, the plaintiffs have failed to establish that they alongwith Ajmer and Barkha Ram were in possession of the suit property as tenants under Nanak Chand and after his death under Ram Nath-defendant No.1. The findings of the learned trial judge are consequently set aside.”

20. After appraising the entire evidence on record, this Court does not find any perversity or illegality in the finding of fact as recorded by the First Appellate Court in respect of possession over the suit land of defendant No.1-Ram Nath. Ld. First Appellate Court has rightly discarded the purported admission of Ram Nath in the written statement of the earlier litigation, for the reasons as detailed in para No.17 of the judgment, as referred above and has rightly relied upon the entries in the record of rights, so as to hold that it is Ram Nath, who was in possession of the suit land and not the plaintiffs-appellants. This Court does not find any merit in the present appeal so as to make any interference in the well-reasoned judgment as recorded by the ld. First Appellate Court.

21 As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed with costs.

Pending application(s), if any, also stand disposed of.

02.05.2024

Vivek

Whether speaking/reasoned?

Whether //reportable?

(DEEPAK GUPTA)

JUDGE

Yes

No