

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.424 of 1989 (O&M)

Date of Order:23.01.2024

Mangal

.Appellant

Versus

Jumma Khan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Rajinder Goel, Advocate
for the appellant.****Mr. Aseem Aggarwal, Advocate
for respondent no.1.****ANIL KSHETARPAL, J**

1. In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the courts below while dismissing his suit for grant of decree of possession by way of pre-emption of sale deed dated 23.02.1985, executed by the owner in favour of defendant no.1-Jumma Khan (defendants no.2 to 4).

2. The superior right of pre-emption was sought on the ground that the plaintiff is tenant in possession of the property which has been sold to defendant no.2 to 4, in favour of defendant no.1-Jumma Khan.

3. The defendants while contesting the suit claimed that the plaintiff was not a tenant on the date of the sale deed. It has been concurrently found by both the courts below that the plaintiff had failed to establish that he was in possession of the property as a tenant on the date of the sale deed.

4. This Bench has 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 in the digital form.

5. The learned counsel representing the appellant has with all vehemence at his command submits that from the year 1958, the revenue record consistently shows that Sh. Mangal, the plaintiff and before him Sh. Asharf, the plaintiff's father was in possession of the property as a tenant. While referring to the Rapat Roznamcha, dated 11.03.1980, he submits that the patwari had no jurisdiction to change the revenue record without following due procedure. He submits that the entry has been changed without there being any evidence to the effect that the plaintiff was ever evicted or he has surrendered the possession by relinquishing his tenancy. Hence he prayed for allowing the appeal.

6. On the other hand, the learned counsel representing the respondent no.1 submits that on 11.03.1980, the vendee (defendant no.1) was nowhere in picture. The vendee has purchased the property after looking into the revenue record which showed that the possession of the plaintiff is not recorded as a tenant.

7. This court has considered the submissions and analyzed the arguments of the learned counsel representing the parties. The relevant part of Section 15 of the Punjab Pre-emption Act, 1913, is extracted as under:-

“Section 15 Persons in whom right of pre-emption vest in respect of sale of Agricultural land and village immovable property-

15.(1) The right of pre-emption in respect of agricultural land and village immovable property shall vest:-

(a) where the sale is by a sole owner:-

First, in the son or daughter or son's son or daughter's son of the vendor or;

Secondly, in the brother or brother's son of the

vendor or;

Thirdly, in the father's brother or father's brother's son of the vendor.

Fourthly, in the tenant who holds under tenancy of the vendor, the land or property sold or a part thereof.

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly:-

First, in the sons or daughters or sons' sons or daughter's sons of the vendor or vendors.

Secondly, in the brothers or brothers's sons of the vendor or vendors;

Thirdly, in the father's brothers or father's brother's sons of the vendor or vendors.

Fourthly, in the other co-sharers.

Fifthly, in the tenants who holds under the tenancy of the vendor or vendors, the land or property sold or a part thereof.

(c) XX XX XX
(2) XX XX XX''

8. It is evident that the plaintiff was required to prove that he was in possession of the suit property as a tenant. On 11.03.1980, i.e. approximately five years before the sale deed was executed, the revenue official had recorded that the possession vests in Mr. Rajinder Prashad. As per the procedure laid down in the Land Records Manual, the patwari after inspecting the crop makes an entry in the khasra girdwari which is prepared for both the crops every six months. Thus, the land was inspected nearly for a period of 5 years i.e. 10 crops and it was found that the plaintiff was not in possession.

9. In this case, the court is not primarily concerned with the

correctness of the change in entry because the plaintiff is required to establish that he continued in possession of the property as a tenant under defendant no.2 to 4. In order to establish his possession, the plaintiff apart from producing the old revenue record, did not lead any other evidence such as the J-forms (that show the sale of crop in the grain market) in order to establish his possession. Even no record of payment of electricity charges for the tubewell has been produced to show his possession over the disputed land.

10. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

11. Dismissed accordingly.

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

January 23, 2024
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(ANIL KSHETARPAL)
JUDGE

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