

RSA-1869-1994 (O&M)
and other connected cases **1** **2024:PHHC:028451**

120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.RSA-1869-1994 (O&M)

Mukhtiar Singh and another
.....Appellants

Versus

Jittu @ Jitu Ram
..Respondent

2.RSA-2241-1994 (O&M)

Mukhtiar Singh
.....Appellant

Versus

Jittu @ Jitu Ram
..Respondent

3.RSA-2240-1994 (O&M)

Ghisa Ram
.....Appellant

Versus

Jittu @ Jitu Ram
..Respondent

Date of decision: 27.02.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Adarsh Jain, Advocate for the appellants

 Mr. Aman Priye Jain, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. In these three connected Regular Second Appeals, the correctness of the concurrent findings of fact arrived at by the courts below are assailed by the defendants. The first suit for the grant of the decree of possession was filed by Sh.Jittu @ Jittu Ram. He claimed to be owner of the property on the basis of the sale deed executed by the court on 26.10.1988 pursuant to the decree for specific performance of the agreement to sell. Sh.Jittu also claimed that he was delivered possession pursuant to the agreement to sell and he was in cultivating possession of the property, though he was recorded as tenant. Two other suits were filed by Sh.Mukhtiar Singh s/o Jagga Singh and Sh.Ghisa Ram s/o Sh.Khyali Ram claiming superior rights of pre-emption on the ground that they are tenants from crop khariff 1984 on payment of 1/3rd batai and therefore, they have superior right to pre-empt the sale deed.

2. Both the courts on appreciation of evidence came to the conclusion that Sh.Kaplu s/o Sh.Pohlu Ram entered into an agreement to sell with respect to the land measuring 34 kanals 4 marlas in favour of Sh.Jittu on 14.11.1967 on receipt of Rs.5400/- out of the total sale consideration of Rs.6,000/-. At the time of entering into the agreement to sell, the possession was delivered and in the revenue record, Sh. Jittu was reflected as tenant in possession. Sh.Kaplu did not honour the agreement to sell. Sh.Jittu filed a suit for the specific performance of the agreement to sell, which was decreed. The aforesaid suit was defended by Sh. Kaplu through his attorney Sh.Jagga Singh.

3. It was held that the plaintiffs in a suit for superior right to pre-empt have failed to make out a case because they are not proved to be tenants in possession of the property. Both the court held that on 14.11.1967 Sh.Jittu was delivered possession and Sh.Mukhtiar Singh and Sh.Ghisa Ram subsequently forcibly entered into possession of the property but they were not lessees.

4. Thus, the suit filed by Sh.Jittu for possession as well as mesne profit was decreed, whereas the suit filed by Sh.Mukhtiar Singh and Sh.Ghisa Ram were dismissed.

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

6. Learned counsel representing the appellants submits that in the revenue record Sh.Mukhtiar Singh and Sh.Ghisa Ram are recorded as tenants, which has presumption of the correctness. He submits that in the absence of any evidence to the contrary, the courts have erred in dismissing their suit.

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

8. It is evident that in the previous round of litigation, it was held that Sh.Jittu was put in possession of the property in the year 1967 pursuant to the agreement to sell. Thereafter, Sh.Kaplu had no right to induct anybody as tenant. Moreover, the revenue record carries rebuttable presumption, which stands rebutted in the present case.

Previously, Sh.Jagga Singh also claimed to be in possession as tenant, however, he failed.

9. Keeping in view the aforesaid facts, no ground to interfere is made out. Hence, all the three appeals are dismissed.

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

27.02.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE