

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA-2560-1994
Date of decision: 19.03.2024

HUKAMI ..Appellant

Versus

JAGBIR SINGH ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Sumeet Bairagi, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. This is plaintiff’s regular second appeal against the judgment and decree passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial Court. The appellant’s suit is based upon the superior right of pre-emption as co-sharer.
2. In Atam Parkash vs. State of Haryana (1986) 2 SCC 249, the Five Judge Bench of the Supreme Court described the right of pre-emption based on consanguinity as 'feudal' 'piratical', 'tribal', 'weak', 'easily defeated' etc., therefore, declared it as ultra vires the Constitution. Subsequently, the Government of Haryana also recognized and repealed the pre-emption right in favour of co-sharer by Haryana Act No.10 of 1995. However, old cases are required to be decided as per un-amended provisions as held by another 5 Judges Bench in Shyam Sunder and others vs. Ram Kumar and another (2001) 8 SCC 24. As already noted, such right has been characterized as feudal, archaic, out-moded, piratical, and inequitable. Recently, in Jhabbar

Singh (deceased) through legal heirs and others Vs. Jagtar Singh son of

Darshan Singh, 2023(1) ARC 812, again the same view has been reiterated

by the Supreme Court.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be narrated.

4. Sh. Kanwar Singh was owner of 7 kanal and 13 marlas land being 1/12th share in the total land measuring 91 kanal and 16 marlas situated in village Balla, Tehsil Assandh, District Karnal. He sold the aforesaid land in favour of Sh. Jagbir Singh-defendant for a sale consideration of Rs.30,000/- vide sale deed dated 17.02.1987.

5. The plaintiff Smt. Hukmi (appellant herein) filed a suit for possession by way of pre-emption. The defendant contested the same on the ground that the plaintiff has waived his right of pre-emption because he had knowledge of the sale deed and defendant was in actual cultivating possession of the suit land prior to the same as tenant as per the entries incorporated in his name in the register of '*khasra girdawari*' for the crops Rabi-1986 to Kharif-1987. The trial Court decreed the suit, whereas, the First Appellate Court reversed the same.

6. This appeal was admitted for regular hearing in the year 1994, which has now come up for hearing after a period of 30 years.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

8. The learned counsel representing the appellant contends that there is no evidence to prove the tenancy in favour of the defendant. He submits that entry in the register of '*khasra girdawari*' does not carry any

presumption and there is no evidence to prove that the defendant was inducted as tenant by Sh. Kanwar Singh. He further submits that there is no evidence of payment of rent and hence, the First Appellate Court has erred in accepting the appeal.

9. Per contra, the learned counsel representing the respondent submits that there is overwhelming evidence to prove that the defendant is in possession of the property as tenant even before the execution of the sale deed.

10. The tenancy is either result of a bilateral contract between the parties or it can be creation of statute.

11. In this case, the defendant while filing the written statement has specifically asserted that he was in possession as tenant before the execution of the sale deed. He produced a copy of '*khasra girdawari*' (Ex.D-1) with respect to the crops from Kharif-1985 till Rabi/Hari-1990. It is evident that in crop Sawani-1986, the defendant is recorded to have cultivated the land as tenant on payment of half share. Apart therefrom, there is oral evidence of Sh. Jagbir Singh-defendant as well as a neighbour Sh. Krishan who owns adjoining agricultural land to prove that defendant was in possession of the property as tenant. Thus, some evidence was produced by the defendant to prove that he was in possession as a tenant. Thereafter, the onus shifted on the plaintiff to prove that defendant was not in possession as tenant on the date of the sale deed, however, he has failed to examine the vendor i.e. Sh. Kanwar Singh. Basically, the First Appellate Court upon evaluation of evidence has reached to a conclusion that possession was with the defendant before the execution of the sale deed as tenant. Such being finding of fact is

not amenable to interfere in second appeal in absence of material, misreading or non-reading of evidence.

12. The learned counsel representing the appellant has failed to draw the attention of the Court to any perversity in the view taken.

13. Hence, no ground to interfere is made out.

14. Dismissed accordingly.

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

March 19th, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No