

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 3129 of 1994

Hari Ram and Others
... Appellant(s)

Versus

Dharambir and Others
... Respondent(s)

AND

2. Regular Second Appeal No. 3130 of 1994

Hari Ram and Others
... Appellant(s)

Versus

Dharambir and Others
... Respondent(s)

DATE OF DECISION: 13.02.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rajiv Sharma, Advocate
for the petitioner(s).

Mr. R.K.Sharma, Advocate
for the respondents.

Anil Kshetarpal, J.

1. This judgment shall dispose of two connected regular second appeals i.e. Regular Second Appeal No. 3129 of 1994 and Regular Second Appeal No. 3130 of 1994, respectively. These two appeals were filed by Mr.O.P.Sharma and Mr. Rajiv Sharma, Advocates and admitted for regular hearing in the year 1995. When, after the passage of nearly 30 years, both these appeals came up for hearing on 25.01.2024, the following order was passed by the Court:-

**Regular Second Appeal No. 3129 of 1994 And
Regular Second Appeal No. 3130 of 1994**

*undertakes to come prepared for the final disposal on
13.02.2024.*

To be listed in the urgent list.

*No further request for an adjournment, oral or written,
shall be entertained.”*

2. Now, the learned counsel representing the appellants submits that he has prepared the cases, however, now he recollects that the briefs were taken away by the appellants from his office. However, he has reconstructed his case file. On the request of the Court, the learned counsel representing the appellants has consented to address arguments.

3. In these two appeals, the defendants assail the correctness of the findings of facts arrived at by the First Appellate Court while reversing the judgment and decree passed by the Trial Court. The plaintiffs, in both the suits, are the purchasers of the respective suit properties vide registered sale deed from Hari Lal, who was the co-owner. At the relevant time, in Regular Second Appeal No. 3129 of 1994, the land was in the cultivation of Prabhu son of Phoola, whereas the land was in possession of Nader son of Sanahi in Regular Second appeal No. 3130 of 1994. It is the case of the defendants that these tenants gave up their possession in favour of the vendor and pursuant to the sale deed executed by Hari Lal, the physical possession was delivered to them. However, the defendants forcibly occupied the same.

4. On the other hand, it is the case of the defendants (appellants) that they are in cultivating possession of the property since crop Rabi 1980 as they purchased the tenancy rights from the previous tenants on the basis of affidavit.

5. The First Appellate Court, on appreciation of the evidence, has found that the tenancy rights in the immovable property cannot be sold without any registered document. Moreover, once the tenants gave up possession, the possession of the land was specifically delivered to the vendees. The defendants have failed to prove that the previous tenants did transfer their rights in their favour. Furthermore, it has been proved that the defendants (appellants) have forcibly entered into possession of the property.

Thus, the first appeal was allowed.

**Regular Second Appeal No. 3129 of 1994 And
Regular Second Appeal No. 3130 of 1994**

6. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned record.

7. The learned counsel representing the appellants submits that the appellants have stepped into the shoes of the previous tenants and, therefore, they are tenants in possession of the property.

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

9. The creation of tenancy is a bilateral contract. There is no evidence that the plaintiffs or their predecessor-in-interest ever inducted the appellants as tenants. Furthermore, the appellants are relying upon the affidavit (Ex.DW.5/A), which is not admissible in evidence because it not registered. The appellants have not claimed to be the sub-tenants.

10. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned judgment and decree passed by the First Appellate Court. Hence, both the appeals are dismissed.

(Anil Kshetarpal)
Judge

February 13, 2024
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No