

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.421 of 1994 (O&M)

Date of Order:02.02.2024

Nirmal Singh and others

.Appellants

Versus

Sohan Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Majithia, Sr. Advocate, with
Mr. Sumit Sinha, Advocate and
Mr. Rishabh Wadhera, Advocate
for the appellants.

Ms. Geetika Rani, Advocate, for
Mr. A.S.Kalra, Advocate
for the respondents.

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 wherein his suit was decreed for grant of decree of permanent injunction to the extent of land measuring 3 kanals and 11 marlas and dismissed qua the land measuring 8 kanals and 12 marlas.

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

3. The plaintiff filed a suit for grant of decree of permanent injunction restraining the defendants from interfering in his possession with respect to the land measuring 12 kanals and 3 marlas as tenant. It is the case of the plaintiff that Sh. Ram Saran son of Sh. Badri, who was the original owner mortgaged the suit land in favour of Sh. Nirmal Singh son of Sh.

Pritam Singh to the extent of ½ share and the other half share in favour of

Sh. Jaisi alias Jai Singh and Sh. Tarlok Singh sons of Sh. Ujagar Singh. However, the plaintiff, namely, Sh. Pritam Singh continued in possession as tenant under Sh. Ram Saran. Subsequently, Sh. Ram Saran sold the property in favour of Sh. Sohan Singh vide registered sale deed dated 06.02.1987. Thereafter, Sh. Sohan Singh and Sh. Sukhdev Singh both sons of Sh. Diwan Singh have been threatening to dispossess the plaintiff.

4. The defendants while contesting the suit claim that the plaintiff never came in possession of the suit land and Sh. Ram Saran handed over possession to them. However, the defendants admitted that they were the owners of the suit land and they had deposited the mortgage money for redemption of the suit land.

5. On appreciation of the pleadings, the following issues were framed:-

- “1. Whether the plaintiff is in possession of the suit land as tenant?OPP*
- 2. Whether the plaintiff is entitled to seek the relief of permanent injunction as prayed for? OPP*
- 3. Whether the plaintiff has no locus standi to file the present suit?*
- 4. Whether the plaintiff has no cause of action for filing the present suit?OPD*
- 5. Relief.”*

6. The trial court dismissed the suit with respect to 8 kanals and 12 marlas of land on the ground that the plaintiff in rebuttal evidence has placed on file certified copy of the order passed by the Collector on 24.08.1987, which cannot be read in evidence on account of late production. The Court held that the plaintiff has proved possession of the land comprised in Rect. No.2, Killa No.561(0-17) and Killa No.562(2-14). However, from perusal

of the jamabandi for the year 1982-1983, the plaintiff is not reflected to be in possession as tenant of 8 kanals and 13 marlas of land comprised in Rect. No.2, Khasra No.563.

7. The plaintiff has filed the first appeal. Before the First Appellate Court, the plaintiff filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 for permission to lead additional evidence. He produced copies of khasra girdawari with respect to 22 crops to prove that he continues to be in possession of 8 kanals and 12 marlas also. However, the First Appellate Court failed to decide his application for additional evidence and dismissed the appeal on the ground that once the property was redeemed, the plaintiff cannot claim to be in possession as a tenant. The court held that the plaintiff have no right to create tenancy over the property in dispute. The court further held that perusal of the jamabandi for the year 1982-1983, reveals that Sh. Ram Saran was shown to be an owner in possession which was transferred in favour of Sh. Sohan Singh.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

9. The learned senior counsel representing the appellant contends that a bare perusal of the order passed by the Collector on 24.08.1987, in an application filed under Section 4 of the Punjab Redemption of Mortgages Act, 1913, it is evident that the possession of Sh. Pritam Singh as tenant is admitted. He submits that the First Appellate Court has overlooked this fact. The aforesaid order was passed in the presence of Sh. Sohan Singh and Sh. Sukhdev Singh sons of Sh. Dewan Singh, the respondents herein. He further contends that the First Appellate Court has erred in overlooking the fact that in column no.9 of the jamabandi for the year 1982-1983, Sh. Pritam Singh is

recorded to be in possession of the property as tenant. He further submits that jamabandi for the year 1973-1974 and khasra girdawari for the Kharif 1972 to Rabi 1983 also proves continuous uninterrupted possession of Sh. Pritam Singh, the plaintiff/appellant.

10. On the other hand, the learned counsel representing the respondents submits that in jamabandi for the year 1982-1983, Ex.P1, Sh. Ram Saran is reflected to be in possession and therefore, the suit filed by the plaintiff has correctly been dismissed.

11. This court has considered the submissions of the learned counsel representing the parties.

12. A perusal of the judgment passed by the First Appellate Court, it becomes evident that the First Appellate Court has erred in observing that after redemption of mortgage of the property, the plaintiff cannot claim continuation of tenancy. In fact, the tenancy rights in favour of Sh. Pritam Singh would not stand merged on creation of mortgage particularly when the mortgage was in favour of Sh. Nirmal Singh son of Sh. Pritam Singh to the extent of $\frac{1}{2}$ share and Sh. Jaisi alias Jai Singh and Sh. Tarlok Singh sons of Sh. Ujagar Singh to the extent of remaining $\frac{1}{2}$ share. Furthermore, Ex.P4 is an order passed by the Collector while deciding an application under Section 4 of the Punjab Redemption of Mortgages Act, 1913. It is evident that this document was produced in evidence by the plaintiff in rebuttal. Though, it should have been led in affirmative evidence. However, at the relevant time, the defendants did not object. Subsequently, it was not appropriate for the trial court to ignore the evidence. At the most, the court could have granted another opportunity to the defendants to lead evidence. However, a certified copy of the order passed by the competent authority should not have been

ignored. At the most, it can be treated as additional evidence. Furthermore, the First Appellate Court has erred in overlooking the fact that the mortgage was not in favour of Sh. Pritam Singh. Rather, it was in favour of Sh. Nirmal Singh to the extent of $\frac{1}{2}$ share and Sh. Jaisi alias Jai Singh and Sh. Tarlok Singh sons of Sh. Ujagar Singh to the extent of remaining $\frac{1}{2}$ share.

13. Moreover, on careful reading of Ex.P4, it is evident that the mortgagees while conceding to the right of the mortgagor to redeem the land specifically stated that the land is in possession of Sh. Pritam Singh as tenant and the tenancy rights would remain unaffected. The Collector further found that from the crop Hari 1973, Sh. Pritam Singh son of Sh. Dewan Singh is in possession as tenant. However, the order of redemption of mortgage would not adversely impact the rights of Sh. Pritam Singh. Furthermore, the First Appellate Court has not even adverted to document Ex.P4. It has also overlooked the jamabandi for the year 1973-1974 and khasra girdawaries from Hari 1973 to Rabi 1983. Even if the additional evidence sought to be produced is ignored, still it is evident that the plaintiff continues in possession as a tenant. Mere change of ownership would not affect the rights of the plaintiff. It is also important to take note that perusal of column no.9 of jamabandi Ex.P1 for the year 1982-1983 proves that Sh. Pritam Singh is in possession of 8 kanals and 12 marlas of land. Only the entry in column no.9 with regard to rate of rent is missing. However, that is only a stray omission on the part of the revenue authorities and that would not take away the plaintiff's rights to continue as tenant.

14. Consequently, the judgments passed by both the courts below are erroneous and hence, set aside. The suit filed by the plaintiff shall stand decreed in entirety.

15. The regular second appeal is allowed.
16. All the pending miscellaneous applications, if any, are also
disposed of.

February 02, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO