

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA-600-1994
Date of decision: 12.03.2024

FARIDABAD COMPLEX ADMINISTRATION, FARIDABAD
AND ANOTHER

..Appellants

Versus

JAGDISH CHAND AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pritam Singh Saini, Sr. Addl. A.G., Haryana
and Mr. J.S. Pannu, AAG, Haryana.
for the appellants.

Mr. Amit Jain, Sr. Advocate
with Mr. Aryaman Thakur, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. This is defendants’ regular second appeal against the judgment passed by the First Appellate Court, which in turn has modified the judgment and decree passed by the trial Court. The respondents (plaintiffs before the trial Court) are occupying public property which originally vested in the Gram Panchayat. Subsequently, the outer limits of Faridabad Complex now Municipal Corporation was extended to include the area of village. Hence, the entire area of the erstwhile village came under the management of Faridabad Complex Administration, which is now managed by Faridabad Municipal Corporation.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Hereinafter the party shall be referred to their status in their suit.

4. The plaintiffs filed a suit for grant of permanent injunction claiming that they are in possession of the said land for the last 20 years as tenants at Will by paying lease amount of Rs.6/- per bigha and they should not be forcibly dispossessed from the land. The defendants contested the case claiming that the plaintiffs are unauthorized occupants.

5. Upon appreciation of evidence, the trial Court held that there is no evidence of tenancy created in favour of the plaintiffs, however, it was held that the plaintiffs shall not be dispossessed except in due course of law. The plaintiffs filed appeal, which has been accepted. The First Appellate Court has held that the possession of the plaintiffs is as lessees because of the following evidence:-

- i. There are as many as four orders passed by the Assistant Collector, IInd Grade, permitting the plaintiffs to deposit the rent.
- ii. In the revenue record, the plaintiffs are recorded as '*gair marusi*' tenants because in Column No.9, there is an entry of '*Lagaan*' i.e. land revenue at the rate of Rs.6/- per bigha.

6. Thus, the First Appellate Court held that the plaintiffs cannot be dispossessed from the land and they are entitled to injunction. The Court also declared that the plaintiffs are '*gair marusi*' tenants.

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 appellants submits that in the Column No.9 of the revenue record, the entry is not of rent but of

amount of land revenue. He submits that there is no evidence to prove that the tenancy was created in favour of the plaintiffs either by Gram Panchayat or by the Faridabad Complex Administration at any point of time. He submits that the various orders passed by the Assistant Collector, IInd Grade, in summary proceedings only permitted the plaintiffs to deposit the rent. Hence, not conclusive.

9. On the other hand, the learned Senior counsel representing the plaintiffs contends that there is consistent entry in favour of the plaintiffs to prove the tenancy in their favour.

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

11. The creation of tenancy can either be by a bilateral contract between the parties or by a legislation. The plaintiffs have not claimed that they took the land on lease either from the Gram Panchayat or from Faridabad Complex Administration. The First Appellate Court has erred in reading the revenue record. The copy of the jamabandi for the year 1962-63 (Ex.D-1) shows that in Column No.10, there was no entry of rent. The entry reflects the amount of land revenue, which is payable to the Government even with respect to the private land. The land revenue and lease money are not synonymous. Same entry continues in the jamabandi for the year 1967-68 (Ex.D-2) and in jamabandi for the 1972-73 (Ex.D-3).

12. The learned counsel representing the appellants is correct in contending that lease can be created only by a bilateral contract or under the statute. In this case, the plaintiffs do not claim that they were inducted as

tenants in the suit land by the Gram Panchayat or by Faridabad Complex Administration at any point of time.

13. Moreover, the orders Ex.P-8 to Ex.P-11 have been passed by the Assistant Collector, IInd Grade on an application filed by the plaintiffs for permitting them to deposit the rent under the Punjab Security of Land Tenures Act, 1953. Although, the Faridabad Complex Administration contested the applications, however, the authorities permitted the plaintiffs to deposit the rent. Those are in nature of summary proceedings. The Assistant Collector, IInd Grade did not cull out, the issues or permit the parties to lead evidence. Hence, those would not operate as *res judicata*.

14. When the plaintiffs filed the present suit, they have claimed tenancy on the ground that there is an entry in the revenue record. They have not explained as to how the tenancy in their favour was ever created by either the Gram Panchayat or Faridabad Complex Administration.

15. Consequently, the First Appellate Court has erred in modifying the judgment and decree passed by the trial Court.

16. Keeping in view the aforesaid facts, the appeal is allowed. The judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

17. The Municipal Corporation, Faridabad shall have liberty to take possession of the public property in accordance with law.

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

March 12th, 2024

(ANIL KSHETARPAL)
JUDGE

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