



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1794-1992 (O&M)

Reserved on :-07.08.2025

Date of Pronouncement:-25.08.2025

Smt. Bhulan (deceased) Through LRs and Others

... Appellants

Versus

Moman (deceased) Through LRs and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Ashok Verma, Advocate
for the appellants.

Mr. Ritesh Aggarwal, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. Respondents/plaintiffs filed a suit for possession of suit land measuring 63 Kanals 8 Marlas comprising Khasra No.58/2/(2-0), 3 (3-0), 4 (3-0), 7 (3-0), 8 (30), 13 (8-0), 15 (7-2) situated at village Kutia Kheri Tehsil and District Hisar claiming that defendants are in illegal possession and Jee Ram was owner of land in Khasra No.58, as per Jamabandi for the year 1943-44 measuring 38 Bighas 10 Biswas. Jee Ram sold the land to Kumbha by registered sale deed dated 23.11.1953. Bhuru father of the plaintiff filed suit for pre-emption No.382 of 1954, which was decreed vide judgment and decree dated 11.11.1955 on payment of ₹940/-, the amount was deposited by Bhuru in time and appeal was dismissed on 23.03.1956, second appeal was



dismissed on 07.02.1962. After decree, consolidation took place and Khasra No.58 was split up to new Khasra numbers reproduced above total measuring 63 Kanals 8 Marlas.

2. Plaintiffs took possession of the suit land, defendants re-gained the possession from Bhuru decree-holder in pursuance of order dated 04.05.1970, Bhuru got symbolic possession only as owner. Bhuru died and plaintiffs and proforma defendants are his legal representatives. Kumbha died, defendants No.1 to 10 are his legal heirs. Plaintiffs filed a petition under Section 18 of Punjab Security of Land Tenures Act, 1953 on 08.01.1963 on the grounds that they have been in cultivating possession as tenants over land for more than 6 years and the land was not reserved, that application was rejected by holding that since Bhuru has purchased the land, so he ceased to be a tenant. The Financial Commissioner dismissed the revision petition vide order dated 15.10.1981. Possession of defendants on the land is illegal and without any rights, plaintiffs being owners are entitled to its possession. Hence the suit.

3. The suit was contested by defendants No.1 to 10 on the grounds that suit is barred by res-judicata, plaintiffs are estopped from filing the suit, suit is bad on account of non-joinder of Mansa Ram and that suit is not maintainable in the present form. Answering defendants have acquired occupancy rights. It was further pleaded that Bhuru never filed revision petition before Financial Commissioner and prayed for dismissal of the suit.

4. Remaining defendants were proceeded ex-parte.



5. Replication was filed reiterating the contents of the plaint and denying the averments of the written statement. From the pleading of the parties following issues were framed and some additional issues on 04.11.1985 were also framed, which are as under as:-

1. Whether the plaintiffs are owners of the suit land and entitled to its possession? OPP
2. Whether the application of the defendants u/s 80 of the Punjab security of Land Tenures Act was dismissed by Financial Commissioner on 13.10.81 hold that defendants were not tenant on the suit land? OPP
3. If issue No. 2 is proved whether the finding of the Financial Commissioner is res-judicata? OPP
4. Whether the suit is barred by the rule of resjudi- cata as alleged? OPD.
5. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.
6. Whether the suit is bad for nonjoinder of necessary parties? OPD.
7. Whether the suit is not maintainable in the present form? OPD
8. whether the suit is not signed and verified by the competent person and according to law? OPD.
9. Whether the civil court has got no jurisdiction to try the present suit? OPD.
10. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD.
11. Whether the defendants are tenants in the suit land, if so, its effect? OPD.
12. Relief.

Additional Issued were also framed on 04.11.1985, which are as

under:



1. Whether the suit is barred by limitation? OPD
2. Whether the suit is not maintainable in the view of Section 47 CPC?
OPD.
3. Whether the plaintiff are entitled to actual possession? OPD.
6. After affording opportunity to both the parties, the learned Additional Senior Sub-Judge, Hisar dismissed the suit. Aggrieved by the judgment and decree, appeal was preferred, the learned Additional District Judge, Hisar, accepted the appeal and set aside the judgment and decree so passed by the learned Additional Senior Sub-Judge, Hisar.
7. Aggrieved by the judgment and decree so passed this regular second appeal has been preferred, notice was served upon the respondents and record was requisitioned.
8. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.
9. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.
10. Learned counsel for the appellants has assailed the judgment and decree passed by the First Appellate Court on the grounds that the First



Appellate Court erred in reversing the finding on issues No.1 and 2. Dismissal of the petition under Section 18 does not mean that the status of tenant of the appellants/defendants came to an end, as the Executing Court has specifically held predecessor-in-interest of the appellants/defendants as tenant on the land and that pre-emptor is entitled to only symbolic possession and that pre-emptor was made to redeliver the possession to Bhuru. It was further held that Hon'ble High Court has never held appellants to be trespassers and the finding of the learned Division Bench has been misinterpreted by the learned First Appellate Court. It has nowhere been recorded that Kumbha was not tenant, rather a finding has been recorded that Kumbha was not a tenant for a continuous period of 6 years. As such he is not entitled to purchase the land. Furthermore the learned First Appellate Court has wrongly recorded that suit is not barred by limitation in view of the finding recorded by the Additional Senior Sub-Judge, Hisar and Hon'ble this Court in previous execution proceedings. The learned counsel further argued that suit is bad for non-joinder of necessary party and the finding recorded on this aspect by the learned Appellate Court are wrong. The learned counsel argued that impugned judgment and decree be set aside and that of learned Additional Senior Sub-Judge, Hisar be restored.

11. Whereas learned counsel for the respondent/defendant argued that there is no illegality or infirmity in the finding recorded by learned First Appellate Court as Division Bench of this Hon'ble Court in previous proceedings between the parties has categorically recorded a finding that Kumbha was not proved to be a tenant over suit property, as such, when Kumbha is not in possession as tenant over suit property, then certainly the



plaintiffs being owners of the suit property are entitled to possession of the suit land as predecessor of the appellants/defendants or appellants/defendants have no right to be in possession over the suit land.

12. The learned First Appellate Court has recorded its findings in para No.7 to 11 of the impugned judgment, which are reproduced as under:-

7. This is the Division Bench judgment of our own High Court. It is, therefore, binding on all. Against this judgment, the defendant's counsel relied upon the Single Bench judgment of our High Court in earlier proceedings. This judgment is dated 17.9.69. vide this judgment, the revision of Bhura was dismissed. The effect of this judgment is that the plaintiff was held to be entitled to symbolic possession. Hence, during the execution of his pre-emption decree, only symbolic possession was given to him. In view of the Division Bench judgment of our own High Court EX.P.2 dt. 4.8.82, it is held that the defendants are not proved to be the tenants. Hence, they are not tenants on the suit land. At the most they can be termed as trespassers. Even during the pendency of this suit, the defendants moved an application to amend the pleadings alleging that they had become the owners of suit land by adverse possession. This also clearly shows that the defendants do not claim themselves to be the tenants. There is also no evidence that the defendants have ever paid any rent to the plaintiffs. When Khumbha Ram purchased the land, his tenancy rights merged into his ownership rights and when the sale was pre-empted, he was no longer a tenant. This pre-emption suit was decreed before the coming into force of section 17(a) of the Punjab Security of Land Tenures Act and hence, Kumbha Ram was not entitled to his tenancy rights under the amended provisions.

8. In view of the Divisional Bench judgment of our own High Court dt. 4-8-82, I find that the defendants are not the tenants over the suit



land. The plaintiffs are therefore, entitled to a decree of possession. Hence, the findings of the lower court on issue No.2 are set aside. Findings of the lower court on issue No.1 are also modified. Issue No.1 is decided in favour of the plaintiff fully.

9. The findings of the lower court on issue No.4 are also set aside. The plaintiffs are not debarred from filing the present suit by the principle of res-judicata. The previous single bench judgment is not binding on the rights of the plaintiffs in view of the latest Division Bench judgment of our own High Court as discussed earlier.
10. The lower court has wrongly decided issue No.6 in favour of the defendants. It is held that Mansa is a necessary part as he is in joint possession of the suit land I have perused the Jamabandi for the year 1978-79 which is EX.P.3. In column no. 5 of & cultivation, there is no name of Mansa. Hence the lower court has wrongly held that Mansa is in joint possession of the suit land. The findings of the lower court on issue No.6 is set aside and issue No.6 is decided against the defendants.
11. The learned lower court has also wrongly decided additional issue No.1 against the plaintiffs. The suit is based on title. The defendants can rebut the claim of the plaintiffs only if they had alleged adverse possession. In the present case, the defendants were claiming themselves to be tenants. Adverse possession was never claimed. During the pendency of the proceedings, an application was filed to amend the written statement that they should be allowed to make the plea of adverse possession. This was not allowed. Hence, this is a simple suit for possession and the defendants can contest the claim only on adverse possession which has not been done in this case. Hence, Articles 64 and 65 of the Limitation Act apply. The findings of the lower court is, therefore, set aside and additional issue No.1 is decided in favour of the plaintiffs against the defendants.



13. Learned counsel for the appellants argued that the learned lower Appellate Court has wrongly placed reliance upon Ex.P1 and Ex.P2 in the face of orders Ex.D1, Ex.D2 and Ex.D3, as Ex.D2 is the order of this Court dated 17.09.1969 vide which appellants were held to be tenant on the land in dispute and vide Ex.D1 physical possession of the suit land was restored to the appellants vide order dated 30.05.1970 by Sub-Judge 3rd Class, Hisar holding them as tenant in the land in dispute. No doubt in documents Ex.D1 and Ex.D2, appellants were held to be in possession as tenants but subsequent to that in revision petition, Financial Commissioner, Haryana has held that the appellants are not in possession as their predecessor Kumbha, after purchase of the suit land became owner of the suit land and his rights as tenant merged into ownership. The findings recorded by the learned First Appellate Court are contained in para No.7 of the impugned judgment, which are reproduced above.

14. The judgment of Division Bench of this Court Ex.P2 has upheld the order of the Financial Commissioner and it has been held as under:-

“It is to be noted, as a matter of fact, that Khumba was not a tenant on the date the Act came into force and we do not find any material on the record to accept him as tenant.”

15. Once it is held by the Division Bench of this High Court that the appellants are not tenant over suit property, the learned First Appellate Court has rightly given weightage to the Judgment of Division Bench of this Court to the Judgment of Single Bench of the High Court. Moreover, vide this judgment, Division Bench has upheld the order of Financial Commissioner vide which the claim of the appellants regarding ownership of the suit property on the basis of their being tenants was declined, was upheld and that



judgment is of later period and Larger Bench so same would certainly prevail over the earlier judgment. In case, appellants were having any grievance against the findings recorded by the Division Bench of this Court, then they could have assailed that judgment in SLP before Hon'ble Apex Court, but the findings recorded by the Division Bench has attained finality, as such, there is no illegality in the findings recorded on issues No.1 and 2 by the learned First Appellate Court. As regards contention that Mansa Ram is a necessary, the same was rightly discarded as in Ex.P3 copy of *Jamabandi* for the year 1978-79, name of Mansa Ram doesn't figure and furthermore as regards limitation is concerned, plaintiffs have filed a suit on the basis of that title and appellants-defendants have not set up any adverse possession, so the learned First Appellate Court has rightly concluded that there was no period of limitation.

16. In view of the foregoing discussion, this Court is of the considered opinion that the present appeal is devoid of merit. Consequently, the appeal stands dismissed, and the judgment and decree passed by the learned First Appellate Court is affirmed.

17. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

25.08.2025
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking? Yes

Whether reportable? Yes