

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****127****RSA-160-2022 (O&M)****Date of decision: 06.04.2026****Ram Kumar****...Appellant(s)****Vs.****Ram Kumar****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Shyam Singh Chhokar, Advocate
for the appellant.

NIDHI GUPTA, J.

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned District Courts; whereby suit filed by the appellant for possession (Symbolical) by way of pre-emption of agricultural land measuring 9K-16M/suit land as described in the plaint alongwith all rights appurtenant thereto and therein, on payment of Rs.1,60,000/-, has been dismissed by both the District Courts.

2. The pleaded case of the appellant was that one Bhupal Singh was owner of the suit land. Bhupal Singh executed a Gift Deed in favour of his minor son Mange Ram, as a result of which, Mange Ram became owner of the suit land. However, Defendant/respondent/Ram Kumar had filed a Suit for specific performance against Bhupal Singh which was decreed on 13.12.2007 and Sale Deed No. 230 dated 04.05.2010 was executed in favour of the defendant. Whereas, Appellant has been cultivating the suit land since 1990 and has been paying batai to Bhupal



Singh and possessing land as tenant. So, he has a right to pre-empt. It was accordingly contended that plaintiff had superior right to pre-empt the sale in question being tenant and, therefore, he requested defendant to admit his claim. However, to no avail. Hence, present suit was filed on 17.11.2010.

3. Upon appraisal of the pleadings and evidence led by the parties, the learned Civil Judge (Junior Division), Subdivision, Bilaspur had dismissed the suit of the plaintiff vide judgment and decree dated 29.01.2016. The Civil Appeal filed by the plaintiff was dismissed by the Additional District Judge, Yamuna Nagar at Jagadhri vide judgment and decree dated 25.02.2020. Hence, the present second appeal by plaintiff.

4. It is *inter alia* submitted by learned counsel for the appellant that the appellant has been primarily non-suited on account of the fact that appellant has not been able to prove that he had been paying batai prior to 1998. It is submitted that appellant has duly produced receipts of payment of batai before 1998 before the learned first Appellate Court by way of additional evidence. Learned counsel submits that in order to prove the case, the appellant/plaintiff examined 7 witnesses and tendered various documents from Ex.P-1 to Ex.P-9. The appellant has exhibited the affidavit given by Bhupal Singh executed on dated 09.11.1994, which was of the time prior to the alleged agreement to sell dated 19.08.1998. Similarly, the original receipt dated 10.11.1998, 21.11.1999 and dated 07.05.2001 for the payment of rent were also exhibited by the appellant. Similarly, the plaintiff has exhibited the order dated 06.07.2007 passed by



Assistant Collector, Second Grade, Chhachhorouli, regarding correction of Khasra Girdwari, jamabandi for the year 2008-09 and certified copy of Khasra Girdwari, which are sufficient to prove the possession of the appellant on the suit land, but the Ld. Lower Courts have failed to appreciate these facts.. However, the receipts regarding payment of rent of dated 20.04.1995, 10.05.1997, 28.04.1998, 24.07.2000, 04.10.2001, 23.04.2002, 12.03.2003, 14.05.2007 & 12.11.2007 are also available with the appellant/plaintiff but could not tender these receipts on the court file as these receipts were misplaced somewhere in the house. After finding these receipts later on when he was searching some other document at his home then the same were given to the counsel who was appearing in the appeal filed by the plaintiff. Thereafter, the plaintiff filed an application under order 41 rule 27 read with section 151 CPC before the First Appellate Court, but the Appellate Court has dismissed the said application on dated 25.02.2020. It is pertinent to mention here that these receipts were of the old period and found by plaintiff later on which were misplaced in the house somewhere. Thus, Ld. First Appellate Court has wrongly and illegally dismissed the application under order 41 rule 27 read with section 151 CPC.

5. It is further submitted by learned counsel for the appellant that the defendant/respondent absolutely failed to connect himself with his claim in the suit land and matter involved in the suit. Even the record placed on court case file has been completely ignored by the Ld. Lower Court and dismissed the suit of the appellant/plaintiff, and the impugned



judgment and decree dated 25.02.2020 passed by Ld. Addl. District Judge Yamuna Nagar and 29.01.2016 passed by Ld. Civil Judge (Junior Division), Sub Division Bilaspur (Yamuna Nagar) is not sustainable in the eyes of law and the same is liable to be set aside. It is also pertinent to mention here that the respondent/defendant had filed an execution to seek the possession of the suit property, when the sale deed was executed in his favour. On the other hand, the respondent/defendant is claiming that he was in possession of the suit property. Hence, the respondent/defendant has taken contradictory stand and the Ld. Trial Court as well as Ld. First Appellant Court are also failed to appreciate this very fact.

6. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of District Courts be set aside.

7. No other argument is raised on behalf of learned counsel for the appellant. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of appellant.

8. Perusal of the record of the case reveals that Bhupal Singh, owner of the suit land had executed a GPA dated 07.01.1999 in favour of his wife PW6 Mamta. Bhupal Singh had, thereafter, gifted the suit land to his minor son vide Gift Deed dated 21.06.1999, vide which possession has been delivered to Mange Ram (minor son). Therefore, possession of the appellant over the suit property could not be proved. No doubt, appellant has produced Receipts Ex.P4 to Ex.P6. However, it is not clear as to in what capacity these receipts have been issued once possession has been



delivered to minor Mange Ram vide registered Sale Deed dated 04.05.2010.

9. As mentioned above, prior to issuance of Rent Receipts Ex.P4 to Ex.P6, Bhupal Singh had executed GPA dated 07.01.1999 in favour of his wife; whereafter he had executed Hibanama dated 21.06.1999 in favour of his son. Admittedly, appellant has not produced any revenue record prior to 1998 to show his tenancy over the suit land. PW6 Mamta, widow of Bhupal Singh had admitted in her cross-examination that defendant is owner in possession of suit land. Even, plaintiff has admitted in his cross-examination that as per the revenue record, his possession is not reflected upon the suit land. Moreover, except for the Receipts Ex.P4 to Ex.P6, plaintiff has not produced any documentary evidence or any other evidence to establish that prior to 1998, he was in possession of the suit land in capacity of tenant. Even no Rent Agreement had been produced by the plaintiff. Plaintiff has also failed to prove continuity of his possession over the suit land. In fact, while appearing as PW7, plaintiff has admitted possession of defendant over the the suit land. Plaintiff was unable to prove his case that he was inducted in the suit property as tenant in the year 1994. The relevant findings of the learned First Appellate Court are contained in para 16 of the judgment dated 25.02.2020, which reads as under: -

“16. However, the plaintiff-appellant has failed to prove that he was inducted as tenant in the year 1994 i.e. prior to execution of the agreement to sell by Bhupal Singh. He has also failed to prove his possession over the suit property. The law is well



*settled that in a suit for pre-emption, the pre-emptor has to maintain his right not only at the stage of sale but also at the stage of suit and decree and in case the pre-emptor loses superior right of pre-emption at any of the stage, he cannot be granted decree. Reliance placed upon **Roshan Lal and others Vs. Sadhu and another, 2011(1) R.C.R. (Civil) 210 (P&H)**. Likely, in the present case, the plaintiff-appellant has miserably failed to prove himself to be a tenant over the suit land and further he has failed to prove that he has maintained his right not only at the stage of sale but also at the stage of suit and decree. Moreover, possession of the defendant-respondent over the suit land is admitted by the plaintiff-appellant himself while appearing in the witness box as PW7 and otherwise also, he is not in possession of the suit land even at the time of passing of the decree by the lower court.”*

10. Lastly, contention of the appellant that he has moved application under Order 41 Rule 27 read with Section 151 CPC dated 17.01.2020 before the learned First Appellate Court to produce the original batai Receipts by way of additional evidence. Respondent has filed reply dated 27.01.2020 of the said application of the appellant. Vide order dated 25.02.2020, application filed by the appellant for leading additional evidence was dismissed by the learned Additional District Judge, Yamuna Nagar at Jagadhri holding as under: -

“4. It is settled principle of law that additional evidence can be allowed even at appellate stage however, the per-requisite conditions for that are (i) the proposed evidence was not earlier within the knowledge of the applicant (ii) the same could not be produced despite exercise of due diligence; or (iii)



the same is required by the court for proper adjudication of the controversy. In the present case, by way of additional evidence, the appellant-applicant-tenant wants to place on record certain batai receipts and an affidavit. However, it needs to be noted that the present suit has been filed by the plaintiff-appellant claiming himself to be tenant over the suit property since the year 1990 and thus, in order to establish his continuous possession, it was incumbent upon the plaintiff-appellant to have lead sufficient cogent and convincing evidence in his affirmative evidence before the lower court, which he failed to do so and thus, mere bald assertions that the receipts which he intends to place on record at this belated stage in appeal could not be placed on record on account of the same being not traceable at earlier stage cannot be said to be a plausible explanation on the part of the appellant-plaintiff. When such is the situation, then, it appears that the instant application has been filed just to fill up the lacuna in the evidence of the appellant-applicant-plaintiff and also to linger on the disposal of the appeal, which is a sheer abuse to the process of law. Moreover, learned counsel for the applicant-appellant-plaintiff has failed to convince the court that the proposed evidence could not be produced earlier despite exercise of due diligence and thus, the case of the appellant-applicant-plaintiff does not fall within the four corners of the per-requisite requirements for allowing him to produce the proposed additional evidence at appellate stage. Hence, the application stands dismissed being devoid of merits.”

11. Therefore, the appellant has miserably failed to prove his contention that he has been Tenant over the suit property since 1998; that



he is in possession of the property; on the contrary, appellant as PW7, has admitted that defendant is in possession of the suit property.

12. Learned counsel for the appellant is unable to controvert or dispute the above said concurrent findings of fact.

13. In view of the above, no ground is made out to interfere in the impugned judgment and decrees of the learned District Courts. Hence, present Second Appeal stands **dismissed**.

14. Pending applications, if any, stand disposed of.

06.04.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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