

(2008) 09 P&H CK 0052

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Sube Singh and Others

APPELLANT

Vs

Bishan Singh and Others

RESPONDENT

Date of Decision: Sept. 24, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2008) 152 PLR 351

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

This is a plaintiffs Regular Second Appeal. Their suit for possession by pre-emption u/s 15 of the Punjab Pre-emption Act, 1913 (as applicable to the State of Haryana) on the ground that they are tenants on the suit land, has been dismissed by both the courts below.

2. The suit was filed by the plaintiffs for pre-empting the sale deed dated 10.4.1995, executed by defendants No. 4 to 7 (owners of land) in favour of defendants No. 1 to 3 for a sale consideration of Rs. 3,65,000/-. Both the courts below have dismissed the suit of the plaintiffs while recording a finding of fact to the effect that on the date of sale, the plaintiffs were not the tenants on the suit land. Against the said judgments and decree the instant appeal has been filed.

3. After hearing counsel for the appellants (plaintiffs) and going through the impugned judgments and decree, I do not find any ground to interfere in the aforesaid finding of fact recorded by the Courts below.

4. The plaintiff claim themselves to be in possession of the suit land as tenants on 10.4.1995, the date of sale, only on the basis of Nehri Khasra Girdwaris, prepared by

the Irrigation Department, copies of which have been placed on record as Ex.P-3 to Ex.P-5 and Ex.P-12. It is the case of the plaintiffs that keeping in view these Nehri Khasra Girdawaris, they were found in possession of the suit land in the order dated 9.10.1995, passed by the Deputy Collector of the Irrigation Department. The Courts below have not relied upon these Nehri Khasra Girdawaris as well as the order dated 9.10.1995, while holding that the said order was set aside by the Appellate Authority vide order Ex.D-15. It was further held that in the Khasra Girdawaris, prepared under the Punjab Land Revenue Act by the Revenue Department, the plaintiffs were not recorded in possession of the suit land as tenants and it is settled law that if there is conflict between Nehri Khasra Girdawaris prepared by the Irrigation Department under the Canal and Drainage Act and the Khasra Girdawaris prepared by the Revenue Department are to be given preference, and in such case, no reliance can be placed on Nehri Khasra Girdawaris, and the same are to be ignored. In this regard, reliance has been placed upon *Birbal v. Shankar Dev and Ors.* 2000(2) P.L.J. 204. The third factor, which has been taken into consideration, is the admission of plaintiff No. 1 Sube Singh, when he appeared as RW-1 in the application filed by the defendants for correction of Khasra Girdawaris. Further in civil suit No. 217 of 1993 filed by the defendants against the Vayamshala restraining them from interfering in their possession, the plaintiffs did not claim that suit land was in their possession as tenants. It has also been held that neither there is any revenue entry in favour of the plaintiffs nor there is any proof that they had ever paid any rent to the owner. The aforesaid facts have not been controverted by the learned Counsel for the appellants-plaintiffs during the course of arguments.

In my opinion, in present case, a pure finding of fact has been recorded by both the courts below on the basis of evidence available on the record to the effect that the plaintiffs were not tenants on the suit land on the day of the sale deed, therefore, their suit has been rightly dismissed. Therefore, I do not find any ground to interfere in the aforesaid concurrent finding of fact, recorded by the courts below. It is well settled law that this Court u/s 100 of the CPC can not re-appreciate the evidence in order to reach the conclusion other than the one recorded by the courts below, merely because another view is possible. In this regard, reference can be made to *Kulwant Kaur and Ors. v. Gurdial Singh Mann (Dead) by L.Rs. and Ors.* (2001) 128 P.L.R. 492 , [Janki Narayan Bhoir Vs. Narayan Namdeo Kadam](#) , [Bondar Singh and Others Vs. Nihal Singh and Others](#), and [Kanhaiyalal and Others Vs. Anupkumar and Others](#) .

5. No substantial question of law is involved in the appeal.