

(1996) 08 P&H CK 0032

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3 of 1988

Dharam Pal

APPELLANT

Vs

Nek Chand (Dead) through his
LRs.

RESPONDENT

Date of Decision: Aug. 28, 1996

Acts Referred:

- Evidence Act, 1872 - Section 114

Citation: (1997) 2 CivCC 71 : (1997) 116 PLR 438 : (1997) 1 RCR(Civil) 532

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: C.B. Goel, for the Appellant; V.K. Jain Raman K. Sharma and J.L. Malhotra, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.

This is a defendant's appeal and has been directed against the judgment and decree dated 11.9.1987 passed by the Court of Additional District Judge, Karnal, who affirmed the judgment and decree dated 1.4.1987 passed by the Court of Sub Judge Ist Class, Karnal, who decreed the suit of the plaintiff-respondents for possession by way of pre-emption.

2. Brief facts of the case are that plaintiffs filed their suit for possession by way of pre-emption of agricultural land measuring 7 kanals 8 marlas situated in village Budanpur, Tehsil and District Karnal and the land measuring 16 Marias also situated in the same village, fully described in the head-note of the plaint and the case set up by the plaintiffs was that one Mangal Lal son of Bhajan Lal, defendant No. 3 was the owner of the agricultural land. Said Mangal Lal sold away the above mentioned agricultural land in favour of defendants No. 1 and 2 namely Dharam Pal and Prem Ram (now appellants) for a sum of Rs. 6600/- by way of registered sale deed dated

19.5.1981. According to the plaintiffs, the sale price is fictitiously got entered in the sale deed as RS. 12,000/- in order to ward off the right of pre-emption. In fact, the agreed consideration was Rs. 6600/-. The defendants did not serve any notice upon the plaintiffs as required u/s 19 of the Punjab Pre-emption Act and had kept the sale transaction as secret. Plaintiff No. 1 had superior right of pre-emption being, tenant of agricultural land measuring 7 kanals 6 marlas and plaintiff No. 2 had superior right of pre-emption being tenant over 16 marlas fully described in the plaint. The plaintiffs remained as tenants being Gair Marussi on their respective parcels of the land and they requested the defendants-vendees to admit their claim and to transfer the land purchased by them for a consideration of Rs. 6600/- but they-have refused to do so.

3. The suit was contested by the defendants on the pleas that the plaintiffs have no locus standi to file the suit; that it is bad being for partial pre-emption; that it is barred by time; that the plaintiffs are estopped by their own act and conduct to file the suit and that the plaintiffs have waived their right of pre-emption. On merits, it was the stand of the defendants that they purchased the land for a consideration of Rs. 12,000/- which was fixed in good faith. This was the market value. The plaintiffs have no superior right of pre-emption. The answering defendants had been cultivating the suit land as tenants under the vendor at the time of sale and they are still in possession of the same as owners, and as such their sale is protected u/s 17-A of the Punjab Security of Land Tenures Act.

4. The plaintiffs filed replication to the written statement in which they reiterated their stand as taken in the plaint while denying the allegations those in the written statement. The pleadings of the parties gave rise to the following issues :-

(1) Whether the plaintiffs have superior right of pre-emption as alleged ? OPP.

(2) Whether the sale consideration was actually paid or fixed in good faith ? OPD.

(3) If issue No. 2 is not proved what was the market value at the time of sale ? OP Parties.

(4) Whether the defendant-vendees have incurred stamp and registration charges, if so to what amount ? OPD.

(5) Whether the plaintiffs have no locus standi to file the present suit ? OPD.

(6) Whether the suit is bad for partial pre-emption ? OPD.

(7) Whether the suit is barred by time limitation ? OPD.

(8) Whether the plaintiffs are estopped to file the present suit by their own act and conduct ? OPD.

(9) Whether the plaintiffs have waived their rights to file the present suit ? OPD.

(10) Whether the suit is bad for mis-joinder of the necessary parties ? OPD.

(11) Whether the defendants were in possession of the suit land as tenants at the time of sale? If so to what effect ? OPD.

(12) Relief.

The plaintiffs led evidence in support of their case, but the defendants did not adduce an iota of evidence in the trial Court either oral or documentary and on the conclusion of the trial, the trial Court decreed the suit subject to payment of Rs. 13,711.50 less Rs. 2400/- already deposited by the plaintiffs and the plaintiffs were further called upon to deposit the remaining amount of Rs. 11,311.50 on or before 1.5.1987, otherwise their suit would be deemed to have been dismissed with costs. Aggrieved by the judgment and decree of the trial court, the defendant-vendees Sarvshri Prem Ram and Dharam Pal filed this appeal which was also " dismissed by the first Appellate Court on 11.9.1987 and aggrieved by the judgment and decrees of the Courts below, the present appeal, which has been disposed of with the assistance of Shri C.B. Goel, Advocate, on behalf of the appellants and Shri V.K. Jain, Sr. Advocate, assisted by Shri J.L. Malhotra, Advocate, on behalf of the respondents.

5. Learned counsel Shri Goel, appearing on behalf of the appellants has assailed the findings of the trial Court mainly on grounds that it is not proved on record that the plaintiff-respondents were tenants over the land in dispute before the sale, at the time of sale and on the date of the passing of the decree by the trial Court. In support of his contention Shri Goel at the first instance has referred to the plaint of the plaintiff-respondents and submitted that the plaintiffs have only alleged that they are Gair Marussi over the agricultural land, subject-matter of the sale, but there is no averments to the effect that they were paying any rent or batai to the original owners or to the vendees-purchasers. In the absence of any averment the use of the word "Gair Marussi" does not convey any status of a tenant when this claim is not corroborated by any revenue document and as such the plaintiffs had no locus standi to file the suit. Counsel Shri Goel also drew my attention to the statement of the plaintiff and submitted that both the plaintiffs Sarvshri Tek Chand and Budh Ram have made contradictory statements with regard to the payment of batai. In one breath they allege that they used to obtain the receipts and on the other hand they stated that they did not obtain any receipt from the original owners and therefore, their statements cannot be read for the benefit of plaintiff-respondents. Mr. Goel was also critical over the conduct of the plaintiffs by stating that the receipts Ex. P.1 and P.2 have been fabricated by the plaintiffs in order to create a status of tenant. My attention was also drawn by Shri Goel to the Khasra girdawari Ex. P.10 and jamabandi Ex. P.11 in order to show that in none of these documents it is mentioned that the plaintiffs used to pay any batai/rent or lagan to the vendors i.e. original owners. On the contrary, it has been submitted by Shri Jain that it is amply proved oh record that plaintiffs were the tenants under the original owners so much so even after the sale in favour of defendant-appellants, the relationship of landlord and tenant has been admitted. There are categorical admissions on the

part of the present appellants which would prove the relationship of plaintiffs and they had the locus standi to file the present suit.

6. I have considered the rival submissions of the learned counsel for the parties and I am of the considered opinion that none of the arguments raised by the learned counsel for the appellants Shri Goel can prevail on the mind of this Court. In various paras of the plaint the case of the plaintiffs was categorical that they were tenants Gair Marussi over the agricultural land which was the subject matter of the sale. It was not incumbent on the part of the plaintiffs to allege the rate of tenancy or in what mode they used to pay the batai. The evidence was not supposed to be pleaded by the plaintiffs in the plaint. Ex. P.1 is a receipt dated 29.5.1992 which clearly shows that plaintiffs used to pay batai. There is a vital document Ex. P.5 for which there is no satisfactory explanation given by the learned counsel for the appellants. Then is the jamabandi for the year 1979-80 much earlier to the sale and in the column No. 9 there is a clear mention that the tenants Tek Chand and Budh Ram who were Gair Marussi had been paying batai 1/3rd to the owners. No doubt in the jamabandi Ex. P.10 for the year 1984-85 column No. 9 has been shown vacant but this document has to be read in the light of Ex. P.5 where again in column No. 5 it has been clearly mentioned that Tek Chand was a gair marussi under the owners. This leads me to discuss the statements of the plaintiffs Sarvshri Tek Chand and Budh Ram. Tek Chand appearing as P.W.1 deposed that he is in occupation of the land for the last 20 years in the capacity of a tenant on payment of 1/3rd batai. Earlier he used to pay the batai to Mangal Lal and thereafter to Prem Kumar etc. Receipts of the batai used to be taken. So much so Prem Ram and others filed the ejectment proceedings. In the cross-examination, he stated that he did not pay the rent to the present vendees as they were not inclined to issue the receipts. Even Budh Ram P.W.2 deposed that the land was on rent on 1/3rd batai basis. In the cross-examination he admitted that no receipt was obtained from the previous owner Mangal Ram and that no rental has been paid to the present vendees but I have not been able to convince myself that the statements of Budh Ram and Tek Chand were materially contradictory so as to disentitle them with the status of a tenant. The stand of the defendants in this light has to be seen because in the written statement they had pleaded that they were in possession of the property in the capacity of a tenant under the original owners but this plea of the contesting defendants (vendees) is not borne out from any oral or documentary evidence, so much so, even the defendants have not examined the original vendors so as to disprove the status of the present plaintiffs. Not an iota of evidence was led by the defendants who took the contradictory stand.

7. The things would become clear when I have examined the two vital documents Ex. P.12 and P.13 relied upon by the plaintiffs. Ex. P. 12 is the ejectment application which was filed by the present appellants Prem Ram and Dharam Pal against Tek Chand in which the present appellants have clearly admitted the status of the plaintiffs as tenants. Similarly in Ex. P. 13 which is the copy of the ejectment

application against Budh Ram his status as tenant has also been admitted. When the appellants themselves admit the plaintiffs as tenants, it is not open for them to say that the plaintiffs were not the tenants over the land on the date of sale or on the date of the institution of the suit.

8. The learned counsel for the respondents then drew my attention to the grounds of appeal and my pertinent attention was invited to para No, 9 where the present appellants had categorically admitted that they obtained the order for ejectment from the competent revenue Court against the plaintiff respondents who had failed to pay the batai without any sufficient cause.. There is no valid explanation about this admission, which goes a long way to prove that the plaintiffs were tenants over the suit land earlier to the sale, at the time of the sale and even thereafter.

9. Now a legal question arises, what would be the effect of an admission made by the parties in the pleadings which has been withdrawn. The appellants filed an application under Order 41 Rule 27 C.P.C. in this appeal in which they have clearly alleged that plaintiff-respondents had not paid any batai to the appellants. Therefore, there existed no relationship of landlord and tenant. Also it was submitted in this application that the appellants filed an ejectment petition before the revenue Court i.e. Assistant Collector Ist Grade, Karnal, who vide order dated 28.9.1987 ordered for the ejectment of the plaintiff-respondents. No doubt, before the start of the arguments, the learned counsel for the appellants had withdrawn this application under Order 41 Rule 27 C.P.C. but in my view with the withdrawal of the application the admission of a party is not erased and can be used by the opposite party. Counsel for the respondents also drew my attention to the reply and the affidavit filed by his clients to the said application under Order 41 Rule 27 C.P.C. and submitted with vehemence that even in the order of the Collector which was passed on 28.4.1987 it is clear that the earlier ejectment order which was obtained ex parte by the appellants has been set aside establishing the relationship of landlord and tenant. There is force in the arguments raised by the learned counsel appearing on behalf of the respondents. The chain of the evidence regarding which I have just made a reference just above and regarding which there is no rebuttal would conclusively show the relationship of landlord and tenant at the relevant time. The learned counsel for the appellants Shri Goel has drawn my attention to the citation reported as Natha Singh and Ors. v. The Financial Commissioner 1976 P.L.J. 293 and submitted that plaintiff respondents could not be held to be tenants in the absence of any payment of rent or contract between the landowners and the tenant. This authority is distinguishable on facts. In the present case jamabandi Ex. P.5 which carries a presumption of truth clearly establishes that plaintiff-respondents were tenants on batai basis. A thing which exists at a relevant time is presumed to exist until and unless it is successfully rebutted. A presumption of fact can be drawn u/s 114 of the Indian Evidence Act that earlier to 1979 Sarvshri Tek Chand and Budh Ram were tenants over the property and that status continued even subsequently. I have already stated above that the defence of the defendants was that they were

the tenants under the original owners which prima facie appears to be incorrect as there is no corroborative entry to that defence. The admission of the contesting defendants and their conduct before the revenue Court clearly disprove the contention raised by the learned counsel for the appellants when he tried to challenge the locus standi of the present plaintiffs. The counsel Shri Gael also relied upon Ram Karon v. The Financial Commissioner 1980 RLR 429 in order to supplement his first argument and this submission is also declined for the same reason because the revenue entries speak otherwise. Also there is oral evidence to the fact which has not been rebutted either by the defendants or by the previous owners that the successful plaintiffs were the tenants. Counsel Shri Gael also made a vain effort by relying upon [Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another,](#) and Onkar son of Rakha Ram v. Vishnu Parkash (1984) 86 P.L.R. 96 in order to convince me that the admission which was made by the appellants in the pleadings or grounds of appeal cannot be used against his clients as those have been withdrawn. Again the case law relied upon by Shri Goel is distinguishable on facts. Assuming for the sake of arguments that the defendant-appellants are permitted to withdraw his earlier admission even then the record is barren so as to dismiss the suit of the plaintiff-respondents. The concurrent findings of fact have been given by the Courts below which cannot be disturbed by this Court till it is shown that there was a patent illegality or error of jurisdiction or that the trial Court as well as the first Appellate Court misinterpreted the evidence.

In the light of above discussion, I have come to this conclusion that there is no merit in this appeal which is hereby dismissed leaving the parties to bear their own costs.