

Gurdial Singh and Others

Vs

Biru and Others

Civil Appeal No. 982(N) of 1968

(K. K. Mathew, Syed M. Fazal Ali JJ)

09.12.1975

JUDGMENT

MATHEW, J. -

1. This is an appeal by special leave against the decree of the High Court of Punjab and Haryana confirming the decrees passed by the courts below decreeing a suit filed by the respondents against the appellants. The suit was for recovery of possession of a piece of land measuring 29 kanals from the appellants. The allegations in the plaint were that the land originally belonged to one Atta Mohammed and others, plaint that the respondents were occupancy tenants of the land; that by virtue of the provisions of the Punjab Occupancy Tenants (Vesting of Preparatory Rights) Act the respondents became the owners of the land and that since the appellants had taken forcible possession of the land in 1958 they were entitled to evict the appellants.

2. The appellants contended that they were the tenants of the land and that the civil court had no jurisdiction to try the suit.

3. The trial Court accepted the contention of the appellants and directed the return of the plaint to the respondents for presentation to the Revenue Court. Against this judgment, the respondents appealed to the learned Subordinate Judge, Ludhiana who remanded the case to the trial Court for decision of the case on merits. The appellants filed a second appeal and the same was disposed of by learned Single Judge of the High Court. By this judgment he directed the trial Court to find whether the appellants were trespassers or tenants and in case they were found to be trespassers, the trial Court will have jurisdiction to pass a decree against them, but in case they were found to be tenants, the suit will have to be dismissed. Thereafter the appellants applied before the trial Court for amendment of the written statement on the basis that they had become the occupancy tenants of the land by adverse possession against the original proprietors and had become owners of it under the Punjab Occupancy Tenants (Vesting of Preparatory Rights) Act and that the suit was barred by limitation. The trial Court allowed the amendment and framed issues on the basis of the contentions in the amended written statement. The trial Court found that the respondents were the occupancy tenants of the land and that the appellants had not become the owners of the land by adverse possession and that the suit was not barred by limitation. The court, therefore, decreed the suit.

4. An appeal was filed by the appellants before the lower appellate Court. That was dismissed. The appellants filed a second appeal against the decree before the High Court. The High Court also dismissed the appeal.

5. The appellants contended before us that they were tenants of the land and that they had become

occupancy tenants by virtue of adverse possession against the original proprietors and that they were the owners of the land. On the other hand, the respondents submitted that they were in possession of the land, that they had acquired the occupancy right and that it was only in Rabi, 1958 that they were forcibly dispossessed by the appellants. The question whether the appellants were in possession of the land as tenants on the date of the suit was considered by the trial Court as well as by the first appellate Court and they held that there was no evidence that in 1958 the appellants were tenants of the land. Apart from it in the amended written statement the appellants' case was that they became owners of the land firstly by reason of their adverse possession of the land for the requisite period and secondly by reason of the fact that they were occupancy tenants within the meaning of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act. After the amendment of the written statement the appellants had no case that they were tenants of the land and that the civil court had, therefore, no jurisdiction to try the suit. In fact their Counsel expressly stated in the trial Court that the plea with regard to lack of jurisdiction had been abandoned. Now the courts below including the High Court have found that the respondents were in actual possession of the land till Rabi, 1958, that they were the occupancy tenants; that the appellants forcibly took possession of the land in Rabi 1958 and that since the suit was filed in May, 1958, the suit was not barred by limitation.

6. Counsel for the appellants argued that khasra girdawaris showed that from 1931 to Rabi 1956 and then from Rabi 1957 onwards the appellants were in possession, that it was only in Kharif 1957 that the entry had been changed in favour of the respondents and that the change in the entry was recorded by the patwari without observing the relevant instructions on this point. The High Court had overruled this plea. It held that no reason had been shown for holding that the entry was incorrect. The appellants made no effort for correction of the entry in khasra girdawari Kharif 1957 at any time. In these circumstances, we see no reason to differ from concurrent finding of the courts on this point. Counsel for the appellants submitted that since the appellants were tenants within the meaning of the Punjab Security of Land Tenures Act, 1953 and that as none of the grounds of eviction mentioned in Section 9 of that Act had been pleaded or made out, the appellants were not liable to be evicted. We see no merits in this contention. This plea was not raised before any of the courts below and is not even mentioned in the statement of case or grounds of appeal before this Court.

7. We dismiss the appeal, but make no order as to costs.

</html