

Harish Chander and Others

Vs

Ghisa Ram and Another

Civil Appeal No. 2150 of 1970

(Baharul Islam, A. D. Koshal JJ)

18.12.1980

JUDGMENT

A. D. KOSHAL, J. -

1. This appeal by special leave is directed against the judgment dated July 27, 1980 of the High Court of Punjab & Haryana affirming the decrees passed by the trial Court and the first appellate Court in a suit for possession by way of pre-emption of the land in dispute in favour of plaintiff-respondent 1 on the ground that he was a tenant of the disputed land when it was sold to the appellants by respondents 2 to 4 through a registered sale deed dated September 29, 1967.
2. The suit was resisted by the appellant with the counter-claim that they, and not respondent 1, were in possession of the land on the relevant date as tenants inasmuch as it had been leased out to them by their vendor Kanti Prasad two years prior to the sale, i.e. in the year 1965. The decrees passed by the courts below proceed on the basis of evidence to the effect that the name of respondent 1 was recorded as a tenant in the Jamabandi for the year 1959-60 (EX. P-1) and consistently thereafter till the year 1968 (Khasragirdawaris Exs. P-2 to P-7). Apart from the oral evidence there is no material on the record which may indicate the falsity of any of the entries in the revenue records and we are of the opinion that the lower courts were fully justified in relying on them.
3. Learned counsel for the appellants relies upon three documents in support of his contention that the Khasra-girdawaris should not be believed. First in point of time is an application (Ex. A-31) which was sent to the concerned Deputy Commissioner through the military authorities by one of the appellants who was an army hand. That application is dated December 11, 1967 and states that the land in dispute was taken by him on lease from Kanti Prasad in the year 1965 and prays that the Khasra-girdawaris should be corrected accordingly. The second is the sale deed itself in which appears a recital to the effect that on the date of the sale the vendors had been in the possession of the land covered by it for the proceeding two years. The third is the plaint itself which seeks "possession by way of pre-emption". None of these documents is of any help to the case of the appellants. The recital in the plaints is easily explained. It is no more than the usual prayer made in suits for pre-emption and may well be interpreted to mean that possession be granted to the plaintiff by the decree in his capacity of a pre-emptor (and not that of a mere tenant). It cannot be implied therefrom that the plaintiff was out of actual possession. In fact the case made out in the plaint was specifically founded on the plea that the plaintiff had been in possession of the land in dispute as a tenant right up to the date of the institution of the suit. Paragraph 4 of the plaint reads; "The plaintiff

has been continuously cultivating the aforesaid land mentioned in para 1 of the plait, for a long time as non-occupancy tenant and I, the plaintiff, have been cultivating the same even until now. The vendees are outsiders, therefore, I, the plaintiff have the preferential right of pre-emption."

4. This plea clearly negatives the contention based on the recital contained in the prayer clause of the plaint.

5. The averments appearing in the sale deed and application Ex. A-31 (which was made about 2 1/2 months later) to the effect that the appellants had been in possession of the land as tenants since 1965 appears to have been falsely made in an attempt to defeat prospective pre-emptors. Had it been a correct statement of fact, there is no reason why it should not have found a place in the agreement of sale which is dated April 24, 1967 but in which no mention of delivery of possession of the land to the appellants is made. Nor is any cogent explanation forthcoming fact that no attempt was made by any of the appellants to have their possession over the land as tenants made the subject-matter of an entry in the relevant records at any time before the sale deed was registered.

6. No suspicion can attach to the entries in the Jamabandi for the year 1959-60, nor have the contents of that document been assailed us. A presumption of truth attaches to those entries in view of the provisions of Section 44 of the Punjab Land Revenue Act. That presumption is no doubt rebuttable but no attempt has been made to displace it. Further, once that presumption is raised, still another comes to the aid of respondent 1 by reason of the rule contained in Section 109 of the Indian Act, namely, that when two persons have been shown to stand to each other in the relationship of landlord and tenant, the burden of proving that such relationship has based, is on the party who so asserts. It may therefore be legitimately presumed that the plaintiff continued to possess the land as a tenant till the institution of the suit.

7. Even though the question of possession of the plaintiff as a tenant is a question of fact which is concluded by concurrent findings arrived at by the courts below, we confirm these findings after consideration of the relevant material.

8. The decree passed in favour of respondent 1 is not challenged on any other ground. The appeal is accordingly dismissed with costs. All mesne profits deposited by respondent 1 in the courts below shall be paid back to him forthwith.

</html