
(1997) 02 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1529 of 1994

Fakhruddin and others

APPELLANT

Vs

Jai Kishan

RESPONDENT

Date of Decision : 07-02-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Punjab Tenancy Act, 1887 — Section 2, 59

Citation : AIR 1997 P&H 270 : (1997) 3 CivCC 391 : (1997) 116 PLR 347 :
(1997) 3 RCR(Civil) 34

Hon'ble Judges : H.S. Brar, J

Bench : Single Bench

Advocate : Y.K. Sharma, for the Appellant; H.S. Diwana, for the Respondent

Judgement

1. Suit for permanent injunction was filed by Jai Kishan, plaintiff-respondent (hereinafter called "the plaintiff") against the defendants-petitioners (hereinafter called the "defendants") restraining them from interfering with the actual physical possession of the plaintiff over the land bearing Khewat No. 215, Khatauni No. 360, Khasra No. 3/3/2/2, measuring 2 kanals 05 marlas situated in the revenue estate of village Ratoli.

2. Along with the suit, an application under Order 39, Rr. 1 and 2 read with Section 151, C.P.C. was filed in which temporary injunction was sought against the defendants restraining them from interfering with the actual physical possession of the plaintiff over the land.

3. The defendants, in their reply to the stay application, stated that it was not the plaintiff but the defendants who were in actual physical possession of the land as tenants. It was stated by them that their father Nathu was the tenant of Jai Kishan, plaintiff and after his death they have inherited the tenancy right from their deceased father and they are still in physical actual cultivating possession of the suit land.

4. The learned trial Court allowed the application of the plaintiff vide order dated 21-3-1992 and restrained the defendants from interfering in any manner whatsoever with the actual physical possession of the plaintiff over the suit land till the final decision of the case.

5. An appeal filed by the defendants against the order of the trial Court dated 21-3-1992 was un-successful. Learned lower appellate Court maintained the order of the trial Court. Hence this revision petition.

6. At the time of admission of this revision petition, the learned Judge of this Court ordered status quo regarding possession till further orders. This petition has now come up for final hearing before me.

7. Admittedly, the defendants are the sons of Nathu, who had died in the year 1989. Nathu, the father of the defendants, was admittedly a tenant in possession of the suit land. The Courts below granted the temporary injunction in favour of the plaintiff and against the defendants mainly on the ground that though Nathu was tenant in possession of the land in dispute and the defendants are his sons and are entitled to inherit the tenancy from his father but as the suit land remained uncultivated for about 3-4 years after the death of their father Nathu, it was presumed that the possession of the land in question reverted back to the owner; and to substantiate the same, reference has been made to Bhag Singh v. Arjan Singh 1982 PLJ 9. It was further held by the Courts below that it was clear from Khasra Girdawaris for the period 31-10-1989 to 9-11-1991 that the land in dispute remained vacant.

8. The contention of the counsel for the defendants that they were in possession throughout after the death of their father Nathu and were even shown in cultivating possession for the year 1992 as is reflected in the Khasra Girdawari of the relevant years, has been repelled by the Courts below on the ground that the defendants have managed to get the column of cultivation prepared in Khasra Girdawari of the year 1992, during the pendency of the suit and the land in dispute remained un-cultivated for about 3-4 years after the death of Nathu.

9. In my considered opinion, the whole approach of the Courts below is erroneous and it is neither based on facts nor on law.

10. Admittedly, Nathu, father of the defendants was a tenant in the suit land. After his death in the year 1989, the land has been shown as vacant in Khasra Girdawaries for the crops of Sawani 1990 Hari 1991 and Sawani 1991 and not for 3-4 years, as has been held by the Courts below. The Courts below have misread the evidence on the file by holding that the land in dispute remained vacant for 3-4 years. The cultivating possession of the defendants is not only shown in the Hari crop dated 14-4-1992 but their cultivating possession has been shown in the later years also. It has been so reflected in the Khasra Girdawaries for the years 1993-94, 1994-95 and 1995-96. Moreover, the defendants cannot cease to be the tenants of the landlord simply because after the death of their father the land in dispute was shown as uncultivated for about three crops. No evidence has

been produced or has been brought to my notice by the learned counsel for the plaintiff that the defendants-tenants were ever evicted from the land in question.

11. It has been held by the Supreme Court in *Munshi and Others Vs. Richpal and Others*, that an order or decree directing eviction of a tenant is necessary to be obtained to bring about a determination of the tenancy. In the case in hand, though the land was shown to be vacant for three crops but the defendants remained in possession of the land and are cultivating it even after the death of their father and their cultivation is shown in the years 1992, 1993, 1994, 1995 and 1996. In this view of the matter the learned Courts below have wrongly held that the defendants ceased to be the tenants of the landlord simply because after the death of Nathu, the land was shown as vacant for three crops.

12. The authority *Bhag Singh v. Arjan Singh*, 1982 PLJ 9, referred to, by the Courts below is not applicable to the facts of this case. The plaintiff in *Bhag Singh's* case (*supra*) had filed a suit for possession against the defendants on the ground that plaintiff was the owner and the defendants were in illegal possession thereof. The defendants pleaded adverse possession for a continuous period of 12 years. It was held by the Court that adverse possession of the defendants was not complete as during those 12 years the land in question remained vacant for four years. In absence of continued cultivation of the land by the defendants including the four years for which the land remained vacant, their adverse possession could not be proved. The rule of continuity of possession as an adverse possession would not be complied with if the land remained without cultivation for four years. The present case does not involve the point in question. Admittedly, in the case in hand, Nathu the father of the defendants, was the tenant of plaintiff-respondent Jai Kishan. After the death of Nathu, the defendants had inherited the tenancy in the land from their father Nathu and as it has been stated above no evidence has been produced which could show that the defendants were ever evicted from the land in question. Rather the possession and cultivation of the defendants is amply reflected in the latest Khasra Girdawaris for the years 1993-94, 1994-95 and 1995-96 including the year 1992.

13. In view of my discussion above, the orders dated 21-3-1992 and 20-11-1993 of the trial Court and Additional District Judge, respectively, are set aside and the application of the plaintiff-respondent under O. 39, Rr. 1 and 2 read with S. 151, C.P.C., is dismissed and the restraint put up on the defendants by the Courts below from interfering in any manner whatsoever in the actual physical possession of the plaintiff-respondent over the suit land till the final decision of the suit is removed. The trial Court is directed to proceed further in accordance with law.

14. Revision-petition stands allowed accordingly.

15. Petition allowed.