

(2008) 05 SC CK 0192

In the Supreme Court Of India

Case No : Civil Appeal No's. 6590 and 6591 of 2005

Tikka Ram and Another

APPELLANT

Vs

Kartara (Deceased) through LRs. and Others
Shivla
(Deceased) through LRs. and Another Vs Phool Singh and
Others

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Punjab Pre-emption Act, 1913 — Section 15(2)

Citation : (2009) 1 MLJ 991 : (2008) 8 SCALE 201 : (2008) 12 SCC 634

Hon'ble Judges : P. Sathasivam, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Vijay Hansaria, Sneha Kalita and Balbir Singh Gupta, for the Appellant; Manoj Swarup, Preetika Dwivedi, Rohit Sohgaure and Yugant R. Marlappalle, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.

I. C.A. No. 6590 of 2005

1. This appeal is directed against the judgment and order dated 23.4.2004 of the High Court of Punjab & Haryana at Chandigarh in R.S.A. No. 2709 of 1984 whereby the High Court allowed the appeal filed by respondent Nos. 1 & 2 herein.

Brief facts:

2. Smt. Kishni - Defendant No. 1/vendor (Respondent No. 3 herein) sold the land measuring 40 Kanals situated in village Gudha, Tehsil and Dist. Karnal by executing registered sale deed in favour of Kartara - vendee/defendant No. 2 (respondent No. 1 herein) and Surta - defendant No. 3 (respondent No. 2 herein), for a sale consideration of Rs. 67,000/-. Tikka Ram and Sewa Ram, appellants herein, claimed themselves to be tenants under the vendor for the last about 12-13 years over the suit land and challenged the sale thereof in favour of

defendant Nos. 2 & 3 by filing suit for pre-emption claiming their superior right to purchase the suit property. In the suit, Smt. Kishni, Kartara and Surta were arrayed as defendants. Kartara and Surta, respondents 1 & 2 herein, contested the suit on the ground that the sale has been effected by a female and, therefore, is not pre-emptible u/s 15(2) of the Punjab Pre-emption Act. On 22.1.1983, the Sub-Judge Ist Class, Karnal dismissed the suit. Aggrieved thereby, the plaintiffs/pre-emptors filed Civil Appeal No. 33/13 of 1983 in the Court of Additional District Judge, Karnal. By order dated 22.9.1984, the first appellate Court allowed the appeal and reversed the judgment and decree dated 22.1.1983 of the sub-Judge, First Class, Karnal. Against the said order, the Vendees/respondent Nos. 1 & 2 herein filed R.S.A. No. 2709 of 1984 in the High Court. The High Court, by order dated 23.4.2004, allowed the appeal and set aside the order dated 22.9.1984 passed by the Additional District Judge, Karnal. Questioning the said order, the plaintiffs/pre-emptors have filed this appeal by way of special leave.

II. C.A. 6591 of 2005

3. This appeal is directed against the judgment and order dated 23.4.2004 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 2710 of 1984 whereby the High Court allowed the appeal filed by the vendees/respondents herein.

Brief facts:

4. Smt. Krishni sold 45 Kanals 2 Marlas of suit land situated in village Gudha, Tehsil & Dist. Karnal to Phool Singh for a sale consideration of Rs. 67,000/-. Out of 45 Kanals 2 Marlas, Tikka Ram and Sewa Ram are the tenants of 2 Kanals 1 Marla and of the remaining 43 Kanals 1 Marla, the appellants herein are tenants. The tenants filed suit for possession by way of pre-emption against the vendor and the vendees. On 22.1.1983, the trial Court dismissed the suit. Aggrieved by the said judgment, the appellants herein filed C.A. No. 39/13 of 1983 in the Court of Additional District Judge, Karnal and the same was partially allowed in favour of appellants 1 & 2 (Pre-emptors) and against respondents 2-5 (vendees) on 22.9.1984. Questioning the said order, the vendees/defendants filed R.S.A. No. 2710 of 1984 in the High Court. The High Court allowed the appeal on 23.4.2004. Against the said order, the appellants have filed this appeal by way of special leave.

5. Since common questions of law and facts arose in both the appeals, they were heard together and are being disposed of by this common judgment.

6. Heard Mr. Vijay Hansaria, learned senior counsel appearing for the appellants and Mr. Manoj Swarup, learned Counsel appearing for the respondents.

7. The only point for consideration in both the appeals is whether the appellants/plaintiffs could be held to be the tenants based on the evidence and materials on record?

8. Tikka Ram and Sewa Ram sons of Matu are appellants in Civil Appeal No. 6590/2005 and the legal representatives of Shivla s/o Shiva and the legal representatives of Devita s/o Nanha are the appellants in C.A. No. 6591 of 2005. When Smt. Kishni - Vendor, sold the land measuring 40 kanals situated in village Gudha, Tehsil and District Karnal by executing a registered sale deed in favour of Kartara - vendee/defendant No. 2 and Surta - defendant No. 3 for a consideration of Rs. 67,000/-, Tikka Ram and Sewa Ram, appellants in Civil Appeal No. 6590 of 2005 claiming as tenants under the vendor/defendant No. 1 for the last about 12 or 13 years over the suit land challenged the sale in favour of defendant Nos. 2 and 3 by filing a suit for pre-emption claiming their superior right to purchase the suit property. The very same vendor, namely, Kishni sold 45 kanals and 2 marlas situated in village Gudha, tehsil and District Karnal to one Phool Singh (respondent No. 1 in C.A.No. 6591/2005). Out of 45 kanals and 2 marlas, the said Tikka Ram and Sewa Ram claimed, as tenants, of two kanals and one marla and the other two appellants, namely, Shivla and Devtia claimed in respect of remaining 43 kanals and one marla as tenants. In the same way, all the four filed a suit claiming superior right of pre-emption being tenant. Though both the suits, appeals and second appeals were disposed of separately and without reference to each other, it is not in dispute that the issues are common and identical.

9. Learned senior counsel appearing for the appellants/plaintiffs after taking us through the entire materials mainly contended that the Khasra Girdhawaris were changed in the revenue records by the patwari. According to him, since the revenue records contain the name of the appellants in respect of the suit lands, the first Appellate Court rightly accepted their case and the High Court committed an error in setting aside the same. The appellants also heavily relied on the oral evidence of P.W.9 Lumberdar, P.W. 10 and P.W. 11 - neighbours, in their evidence they asserted that the appellants are in possession of the suit land as tenants. In addition to the same, the appellants also relied on the specific statement made by the vendor in the complaint (FIR) to the police to the effect that the plaintiffs are in possession of the suit lands as tenants. The appellants finally relied on the statement of counsel for the vendors, namely, Mr. Malhotra to show that the appellants were in possession and are continuing the suit lands as tenants. On the other hand, learned Counsel appearing for the respondents submitted that first of all the entry in the revenue records which was made behind the vendor in the year 1978 was cancelled by the Collector. He further submitted that in the absence of any documentary evidence with regard to payment of rent, receipt etc. the appellants claim that they are tenants of the suit land cannot be accepted. He also submitted that a mere reference in the FIR to the police and the statement of a counsel are not relevant material to prove their case that they were in possession of the land and are continuing as tenants.

10. Since all the above contentions are interconnected, they are being considered in the following paras. First, we have to see whether correction of Khasra Girdhawaris was made by adopting the correct procedure in accordance

with the standing instruction of the Financial Commissioner. Though the plaintiffs have claimed their possession as tenants for the last 12-15 years admittedly no pattanama (lease deed) has been produced. There is no explanation at all as to why no pattanama has been ever got executed. No receipt of payment batai for any of the year though the claim that they were in possession of the land for more than 12-15 years. Further, the records show that the change of Khasra Girdhawaris was made only in the year 1978 showing their possession as tenants from Kharif 1976 to Rabi 1978 and the said order was passed by the Assistant Collector IInd Grade on 11.07.1979. Since the said order came to be passed without notice to anyone including the vendor admittedly the order of the Assistant Collector effecting changes in Khasra Girdhawaris was set aside by the Collector and the case has been remanded for taking fresh decision. It is brought to our notice that no further change has been effected in the revenue records by the authority concerned. It is clear that though Khasra Girdhawaris were corrected for the first time in the year 1978 in view of the fact that the same was set aside by the higher authority and in the absence of any subsequent order no importance need be given for the same.

11. As rightly pointed out by learned Counsel for the respondents though the appellants claimed that they were in possession of the suit lands nearly for a period of 12-15 years prior to the filing of the suit as tenants admittedly there is no evidence of execution of lease deed or payment of rent at any point of time. In the absence of execution of a proper pattanama (lease deed) and payment of rent their claim that they are the tenants of the suit land cannot be accepted. It is useful to refer to the recent decision of this Court reported in Jagadeesh and Another Vs. State of Karnataka and Others, while considering similar claim as to the tenancy, this Court held:

11. We have already noted the findings made by the High Court in the impugned judgment on the question whether the appellants could be held to be the tenants on the evidence and materials on record. While doing so, in our view, the High Court was justified in coming to the conclusion that the evidence and material on record would clearly establish that the appellants were not able to prove that they were the tenants in respect of the scheduled land under the respondents. One of the main criteria for deciding whether a particular person is a tenant or not is to see whether there was payment of rent, either in cash or in kind. In this case, while rejecting the claim of the appellants, the High Court had considered that the appellants had failed to satisfy the court that any payment of rent was made either by the father of the appellants or by the appellants themselves.

While agreeing with the said view, we reiterate that payment of rent or lease amount either in cash or in kind is one of the relevant criteria for deciding whether a person is a tenant or not. (Emphasis supplied) Neither lease deed nor payment of rent was substantiated in these cases. In the absence of any such material and really if they were tenants for 12-15 years prior to filing of suit they would have taken steps much earlier and got Khasra Girdhawaris changed.

12. Coming to the claim based on the statement made in the FIR, first of all as rightly observed by the High Court a bald statement in a complaint to the police in respect of certain incident is not a relevant factor for deciding the issue of tenancy in a civil proceeding. At the most it can only be used for corroborating or contradicting its maker when he appears in court as a witness. The FIR marked as Exh. P.W.9/A was given by one Premsingh son of Kartar Singh aged about 20/22 years. It further shows that at that time he was studying in B.A. Ist year S.D. College, Panipat. In the whole of the complaint, he made only one solitary statement stating that "this land was under the tenancy of Tikka son of Matu...." Except the above reference, there are no other details such as when the said Tikka was inducted as tenant, extent of land etc. In such circumstances, in the absence of any other corroborative evidence, reference in the FIR can never be treated as a substantive piece of evidence in a civil proceeding.

13. Learned senior counsel for the appellants strongly relied on the statement of Shri S.K. Malhotra counsel for the vendees in support of their claim. It is seen that Shri Malhotra had made a statement on 13.06.1979 to the effect that the vendees would not dispossess the plaintiffs from the suit land except in due course of law. From the said statement, it was argued that it amounts to his admission that the plaintiffs were in possession of the suit land on the date of sale of the land to the vendees. As rightly observed by the High Court, from the statement of the counsel, it cannot be construed that the parties have admitted the status of the plaintiffs as tenants under the vendor. Consequently, we reject the said contention and accept the conclusion arrived at by the High Court.

14. Though the appellants heavily relied on the evidence of P.W. 9 Lumberdar and P.W. 10 and P.W. 11 - neighbours, as observed earlier, in the absence of any documentary evidence, such as entries in the revenue records, lease deed, rent receipt etc. no credence would be given to their oral evidence. In fact, the statement of P.W.9 who claims to be a Lumberdar runs counter to the revenue records. As observed earlier, in the absence of acceptable documentary evidence, the case of the plaintiffs cannot be accepted on the basis of oral evidence of neighbours.

15. In the light of the above discussion, we are satisfied that the High Court has considered all the relevant aspects and rightly set aside the judgment and decree of the first Appellate Court and restored that of the trial Court. Consequently, both the appeals fail and are accordingly dismissed. No costs.