Harish Chander & Ors vs Ghisa Ram And Anr on 18 December, 1980

Equivalent citations: 1981 AIR 695, 1981 SCR (2) 405, AIR 1981 SUPREME COURT 695, 1981 REVLR 160, 1981 (1) SCC 431, (1981) LANDLR 138, 1981 PUNJ LJ 121, (1981) 2 SCR 405 (SC), 1981 UJ(SC) 70, (1981) 94 MAD LW 78, (1981) CURLJ(CCR) 82

Author: A.D. Koshal

Bench: A.D. Koshal, Baharul Islam

PETITIONER:
HARISH CHANDER & ORS.

Vs.

RESPONDENT:
GHISA RAM AND ANR.

DATE OF JUDGMENT18/12/1980

BENCH:
KOSHAL, A.D.
BENCH:
KOSHAL, A.D.
ISLAM, BAHARUL (J)

CITATION:
1981 AIR 695 1981 SCR (2) 405
1981 SCC (1) 431

ACT:
Punjab Land Revenue Act, Section 44 and Rule 1 contained in Section 109 Evidence Act-Scope of-Suit of pre-emption of land on the ground that the plaintiff was a tenant-Presumption of truth of entries in favour of the revenue records like Jamabandi and Khasra Girdawaris.

HEADNOTE:
Dismissing the defendant's appeal and affirming the decree in favour of the plaintiffs, the Court.
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HELD: A presumption of truth attaches to the entries in the Jamabandi for the year 1959-60 showing the defendant-respondents as a tenant, in view of the provisions of

Section 44 of the Punjab Land Revenue Act. That presumption is no doubt rebuttable, but, in the instant case, no attempt has been made to displace it. [407C-D]

Further, once that presumption is raised, still another comes to the aid of respondent No. 1 by reason of the rule contained in Section 109 of the Indian Evidence 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 ceased, 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. [407D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2150 of 1970.

Appeal by Special Leave from the Judgment and Order dated 27-7-1980 of the Punjab and Haryana High Court in R.S. Harbans Singh for the Appellant.

Hardayal Hardy and B. Datta, for the Respondent. The Judgment of the Court was delivered by KOSHAL, J.- This appeal by special leave is directed against the judgment dated July 27, 1970 of the High Court of Punjab and 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 No. 1 on the ground that he was a tenant of the disputed land when it was sold to the appellants by respondents Nos. 2 to 4 through a registered sale deed dated September 29, 1967.

2. The suit was resisted by the appellants with the counter-claim that they, and not respondent No. 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 No. 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.

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. A31) 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-girdawari 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 possession of the

land covered by it for the preceding 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 plaint is easily explained. It is no more than the usual prayer made in suits for preemption 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 upto the date of the institution of the suit. Paragraph 4 of the plaint reads:

> "4. The plaintiff has been continuously cultivating the aforesaid land mentioned in para No. 1 of the plaint, for a long time as non-occupancy tenant and I, the plaintiff, have been cultivating the same even uptil now. The Vendees are outsiders, therefore, I, the plaintiff have the preferential right of pre- emption."

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

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 preemptors. 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 the 24th April, 1967 but in which no mention of delivery of possession of the land to the appellants is made. Nor is any cogent explanation forthcoming for the 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.

No suspicion can attach to the entries in the jamabandi for the year 1959-60, nor have the contents of that document been assailed before us. A presumption of truth attaches to those entries in view of the provisions of s. 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 No. 1 by reason of the rule contained in s. 109 of the Indian Evidence 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 ceased, 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.

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.

3. The decree passed in favour of respondent No. 1 is not challenged on any other ground. The appeal is accordingly dismissed with costs. All mesne profits deposited by respondent No. 1 in the courts below shall be paid back to him forthwith.

V.D.K Appeal dismissed.