

KUNDAN LAL & ANR.

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v.

KAMRUDDIN & ANR.

(Civil Appeal No.6671 of 2008)

DECEMBER 01, 2016

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[R. K. AGRAWAL AND R. BANUMATHI, JJ.]

Possession:

Illegal Possession – Respondent no.1 filed suit for possession of property contending that he was a tenant under respondent no.2/ Punjab Wakf board – Case of respondent no.1 that few months after he became tenant, communal riots broke out and his family was forced to shift to another village and he too was out of station and that taking advantage of his absence, the appellants took illegal possession of the suit property – Plea of appellants nos. 1 & 2 that they took possession from one ‘S’ and respondent no.2 had also accepted appellants as its tenants – Courts below held that the suit property was never allotted to ‘S’ and appellants had failed to establish their possession over the suit property as the tenant – Suit was decreed in favour of respondent no.1 – On appeal, held: Respondent no.1 has produced receipts regarding payment of rent to respondent no.2 – On the other hand, receipts placed on record by the appellants related to a different property and were not connected to the suit property in question – Appellant accordingly has no right to claim the suit property – Therefore, appellants directed to vacate the suit premises within stipulated time frame.

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Dismissing the appeal, the Court

HELD: As seen from the judgments of the Courts below, the first respondent has produced receipts regarding payment of rent to respondent no.2, regarding Khasra No. 270 which are Ex. PW-2/2 to Ex. PW-10 and PW-5/1 to Ex. PW-5/3 and Ex. PW-6/1 to Ex. PW-6/3. The contesting appellants/defendants have also placed on record receipts Ex. DW-3/1, and Ex. DW-5/1 to Ex. DW-5/4; Courts below held that Mark A clearly shows that the same related to property bearing Khasra No. 267 and in that way the same can not be connected to the suit land. Based on oral

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A and documentary evidence, the courts below have recorded
 concurrent findings of fact that the appellant is in possession and
 allotted different survey number in Khasra No. 267 and he has
 no right to claim the suit property. As prayed by the appellants,
 six months' time granted to vacate the suit premises, subject to
 B undertaking stating that appellant shall not create any third party
 rights and will clear all the rent/dues/occupational charges to the
 Wakf Board in meanwhile and will peacefully vacate the suit
 premises concerned within the stipulated time frame positively.
 [Para 9, 11] [102-C-F]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6671
 of 2008.

From the Judgment and Order dated 16.03.2007 of the High Court
 of Punjab & Haryana at Chandigarh in R.S.A. No. 1412 of 2002.

D Suresh C. Gupta, Birendra Kumar Mishra, Kamal Mohan Gupta,
 Ms. Poonam Atey, Advs. for the Appellants.

Neeraj Kumar Jain, Sr. Adv., Siddharth Jain, Naresh Kumar,
 Abinash Kumar Mishra, Mrs. B. Sunita Rao, Advs. for the Respondents.

The Judgment of the Court was delivered by

E **R. BANUMATHI, J.** 1. Leave granted.

2. This appeal arises out of the Judgment dated 16.03.2007 passed
 by the High Court of Punjab Haryana at Chandigarh in RSA No. 1412
 of 2002 confirming the Judgment of the courts below wherein the
 appellants were directed to hand-over the possession of the suit property
 in question.

F 3. Respondent/plaintiff Kamruddin filed the suit for possession of
 the suit property. Case of respondent/plaintiffs was that he became a
 tenant under respondent no. 2/Punjab Wakf Board @ Rs. 50/- per month
 since 01.04.1990 over the suit property measuring 120 square yard in
 G Khasra No. 270 more fully described in blue and red colour in the site
 plan attached with the plaint. Further, case of first respondent/plaintiff is
 that in the month of November 1990, when his family had shifted to
 village Sikarpur in the wake of riots in the Ramjanam Bhumi & Babri
 Masjid and he was out of station on his truck, taking advantage of his
 absence the appellants have taken illegal possession of the suit property
 H and hence first respondent/plaintiff filed the suit for vacant possession.

4. The appellants/defendant nos. 1 and 2 contested the suit claiming that one Shivalal was in possession of the suit property as the said Shivalal had the property on lease from Punjab Wakf Board and also raised construction on the suit property. The appellant nos. 1 and 2 have taken possession of the suit property from said Shivalal under an agreement dated 16.05.1990. The second respondent/Punjab Wakf Board also accepted the appellants as its tenants vide allotment order dated 01.12.1990 and started receiving rent from them. Thus, according to the appellants they became tenants of the suit property under Punjab Wakf Board @ Rs. 100/- per month. Punjab Wakf Board also filed a separate written statement on the same lines.

5. On the above pleadings, issues were framed by the Trial Court and the Trial Court held issue no. 1 in favour of the first respondent/plaintiff holding that the suit property was allotted to him as tenant by the Punjab Wakf Board since 01.04.1990 on monthly rent @ Rs. 50/-. The Trial Court further held that the suit property was never allotted to Shivalal from whom allegedly the appellants had taken possession and that the appellants had failed to establish their possession over the suit property as the tenant. On those findings, plaintiff's suit for the first respondent for possession was decreed.

6. On appeal, the First Appellate Court/Additional District Judge, Rewari affirmed the findings of the Trial Court and dismissed the appeal preferred by the appellants. On further appeal, the High Court dismissed the same by the impugned judgment.

7. We have heard the learned counsel for the parties at a considerable length. The learned counsel for the appellants placed strong reliance upon the agreement between the appellant and Shivalal dated 16.05.1990 and the allotment order by the Punjab Wakf Board in favour of the appellant to contend that the appellants are the tenants of Khasra No. 270(Old Khasra No. 867). It was submitted that Shivalal had handed over the possession of the suit property, measuring 19½ sq. yards forming part of Khasra No. 270 and the same was also approved by the Punjab Wakf Board and the appellants had been paying the rent while so courts below were not right in holding that the appellants are in illegal occupation of the suit property.

8. On the other hand the learned counsel for the first respondent/plaintiff submitted that Shivalal was nor given any tenancy in Khasra No. 270 and he could not have entered into any agreement in respect of

A Khasra No. 270 and the concurrent findings recorded by the Courts below are based on evidence and the same do not warrant any interference.

9. On perusal of Ex. PW- 2/1, the allotment order, it is brought in evidence that the first respondent/plaintiff was allotted area measuring
B 126 square yards being Khasra No. 270 with effect from 01.04.1990. The Trial Court as well as the First Appellate Court noted that the site plan on the back of the said allotment order shows that the suit property is a part of the allotted area measuring 126 square yards. As seen from
C the judgments of the Courts below, the first respondent has produced receipts regarding payment of rent to respondent no. 2, regarding Khasra No. 270 which are Ex. PW-2/2 to Ex. PW-10 and PW-5/1 to Ex. PW-5/3 and Ex. PW-6/1 to Ex. PW-6/3. The contesting defendants have also placed on record receipts Ex. DW-3/1, and Ex. DW-5/1 to Ex. DW-5/4;
D Courts below held that Mark A clearly shows that the same related to property bearing Khasra No. 267 and in that way the same can not be connected to the suit land. Based on oral and documentary evidence, the courts below have recorded concurrent findings of fact that the appellant is in possession and allotted different survey number in Khasra No. 267 and he has no right to claim the suit property.

10. In view of the above, the Civil Appeal stands dismissed.

E 11. However, as prayed for by the learned counsel for the appellants, six months' time is granted to vacate the suit premises, subject to filing usual undertaking in the Registry of this Court within four weeks from today, stating that the appellant shall not create any third party rights, will clear all the rent/dues/occupational charges to the Wakf Board
F in the meanwhile and will peacefully vacate the suit premises concerned within the stipulated time frame positively.