

APPELLATE CIVIL

Before Harnam Singh, J.

DASONDHA SINGH AND OTHERS,—Appellants.

v.

LAL SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 703 of 1951

1955

Dec., 8th

Punjab Tenancy Act (XVI of 1887)—Section 59(1)(d)—Land owned by the Common Ancestor in 1862—Land not occupied by the Common Ancestor or his descendants between 1878 and 1882—Whether land occupied by the Common Ancestor within the meaning of Clause (d) of section 59(1) of the Punjab Tenancy Act.

Held, that for the application of section 59(1) (d) it is not sufficient that the land was occupied by the Common Ancestor. The words "male collateral relatives in the male line of descent from the Common Ancestor of the deceased tenant and those relatives" occurring in clause (d) of section 59(1) of the Act imply that the land should have descended from the Common Ancestor to his heirs

Regular Second Appeal from the decree of the Court of Senior Sub-Judge with enhanced appellate powers, Hissar, dated 9th day of June, 1951 modifying that of the Sub-Judge, 4th Class, Hissar (Sirsa), dated the 27th March, 1951 (dismissing the plaintiff's suit), to this extent that the plaintiffs are granted a decree for possession, as owners of Khasra No. 274 in suit against the defendants-respondents and dismissing the rest of the suit and leaving the partners— to bear their own costs throughout.

YASH PAL GANDHI and R. N. MALHOTRA, for Appellants.

C. L. AGGARWAL, for Respondents.

JUDGMENT

HARNAM SINGH, J.—In Civil Appeal No. 25 of Harnam Singh, 1951 the Senior Subordinate Judge, Hissar has found J. that Raju common ancestor occupied the land in suit in 1862.

Mr. Yash Pal Gandhi urges that on the finding that Raju common ancestor occupied *khasra* No. 274, the suit should have been dismissed for the possession of *khasra* No. 274.

In the settlement of 1862 Raju is shown to be the owner of *khasra* No. 295 measuring 4 *kanals* 15 *marlas banjar*. In the *jamabandi* of 1877-78 Phallu, Nathal, Jaimal and Fatta, sons of Kewal, *biswedars*, are shown to be owners in possession of *khasra* No. 295 measuring 4 *kanals* 15 *marlas*. In the settlement of 1882 Shaman, son of Raju, is shown to be mortgagor and Uttam and Kishna, sons of Hakam Singh, are shown to be mortgagees of *Khasra* No. 295 measuring 9 *kanals* 7 *marlas*. In these circumstances it is plain that Raju or his descendants did not occupy *khasra* No. 295 between 1878 and 1882.

Khasra No. 274 of the *jamabandi* of 1939-40 corresponds to *khasra* No. 295 of the settlement of 1862.

In *Mula Singh and another versus Muhammad Sher and another* (1), Addison, J., observed—

“In my judgment the fact that Mitha Singh was, for a harvest or two, a tenant of the, then occupancy tenant, Ganga Singh, does

Dasondha
Singh and
others
v.
Lal Singh and
others
—
Harnam Singh,
J.

not mean that he occupied the land within the meaning of section 59(1), Punjab Tenancy Act. What is meant there is that it is not necessary to decide in what capacity the common ancestor held the land provided he did hold it and the land descended from him to his heirs."

Mr Yash Pal *Gandhi* urges that it is not necessary for the collaterals to prove that the land had descended from the common ancestor to his heirs and it was sufficient for the application of section 59(1)(d) of the Punjab Tenancy Act, 1887, hereinafter called the Act, to prove that the land was occupied by the common ancestor. In my judgment the words "male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives" occurring in clause (d) of section 59(1) of the Act imply that the land should have descended from the common ancestor to his heirs. In this case this condition is not satisfied.

In the result, I affirm the judgment *qua khasra* No. 274 and dismiss with costs Regular Second Appeal No. 703 of 1951.