



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on: 01.05.2026
Date of Decision: 29.05.2026**

1. RSA-2115-2006 (O&M)

SANSAR DEVI AND ORS. Appellants

Versus

MAHABIR DASS Respondent

2. RSA-973-2010 (O&M)

SANSAR DEVI AND ORS. Appellants

Versus

MAHABIR DASS Respondent

3. COCP-885-2010

SANSAR DEVI @ SANSAR BALA AND ORS. Petitioners

Versus

MAHABIR DASS Respondent

4. CRM-M-32841-2010

MAHANT MAHABIR DASS AND ORS. Petitioners

Versus

STATE OF HARYANA AND ANOTHER Respondents

CORAM: HON'BLE MRS. JUSTICE RAMESH KUMARI

Present : Mr. Amit Jain, Senior Advocate with
Ms. Nikita Sharma, Advocate for the appellant(s)
in RSA-2115-2006 and RSA-973-2010 and
for the petitioner in COCP-885-2010 and for respondent No.2
in CRM-M-32840-2010.

Mr. Sanjiv Kumar Aggarwal, Advocate (through V.C.) with
Mr. Nissim Aggarwal, Advocate and



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-2-

Mr. A.V.S. Parmar, Advocate
for the respondent(s) in RSA-2115-2006 and RSA-973-2010.

Mr. Nipun Vashist, Advocate
for petitioner No.1 in CRM-M-32841-2010 and
for respondent in COCP-885-2010.

Mr. Kapil Aggarwal, Advocate
for respondent No.2 in CRM-M-32841-2010.

RAMESH KUMARI, J. (oral)

1. This order shall dispose of the aforementioned regular second appeals bearing No. RSA-2115-2006 and RSA-973-2010 as well as petitions bearing No. COCP-885-2010 and CRM-M-32841-2010.
2. RSA-2115-2006 had been filed by the appellants/successors-in-interest of original plaintiff-Rumal Kaur against the impugned judgment and decree dated 22.04.2006 whereby, appeal filed by the appellants/plaintiffs against dismissal of civil suit No.1080 of 30.10.1992 instituted on 16.08.1985, had been dismissed.
3. Civil suit No.1080/1985 was filed for declaration to the effect that the change of cultivation in respect of the land bearing Rect. No.6 killa No.23 (4-4), Rect. No.8 killa Nos. 21 (4-8), 22 (5-18), Rect. No.9 killa Nos. 3(4-17), 9(8-8), total area 27 kanal 7 marla, situated in village Kharkhari Bhiwan, since *Kharif* 1982 in the name of the defendant is illegal, invalid, without jurisdiction and nullity in the eyes of law and that the plaintiff was still in continuous possession as a tenant, with consequential relief of permanent injunction restraining the respondent (hereinafter referred to as defendant) from interfering into the



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COC-P-885-2010 and CRM-M-32841-2010**

-3-

peaceful possession of the plaintiff over the above numbered suit property and from forcibly dispossessing the plaintiff therefrom.

4. The brief facts of civil suit No.1080/1985 filed by Rimal Kaur, plaintiff are that, the suit land including other land measuring 121 *kanal* 14 *marla* situated in village Kharkhari Bhiwan had been in cultivating possession of Jai Singh, her husband as tenant since 1966 at the annual rent of an amount of Rs.1,000/-. After his death, plaintiff came in cultivating possession as tenant. The defendant received rent till *Rabi* 1983. Thereafter, the defendant in collusion with the revenue officials, illegally got changed *Khasra Girdawari* entries of the suit land in his name from *Kharif* 1983 without issuance of any notice to her. She had never been ejected from the suit property. She had never surrendered the possession in favour of the defendant. The defendant in collusion with the village Patwari and other persons, who were inimical towards her, obtained her thumb impressions on blank papers. After coming to know of fraud and forgery, she filed a complaint to the Police authorities against village Patwari and the defendant. She also moved application for correction of *Khasra Girdawari* to Assistant Collector IInd Grade, Rewari. However, during the pendency of said application, *jamabandi* for the year 1983-84 was prepared on the basis of false and wrong revenue entries in the *Khasra Girdawari*. Her application for correction of *Khasra Girdawari* had been dismissed vide order dated 05.08.1985 Ex. DA. The defendant illegally intends to dispossess her from the suit property. She requested him to refrain from doing so but it was to no avail which necessitated the filing of the suit.



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-4-

5. The respondent, defendant in written statement admitted initial possession of the plaintiff over the suit property through her sub-lettees but pleaded that plaintiff and her sub-lettees surrendered the possession of the suit land to the defendant on 22.10.1981 out of her free will and understanding. Rapat Rojnamchas No.66, 67 and 69 vide Ex. DW3/1, DW3/2 and DW3/3 respectively, dated 22.10.1981 were entered by the Patwari which were thumb marked by her and her sub-lettees. From the crop of *Kharif* 1981, the defendant is in cultivating possession of the suit land. The plaintiff had not paid rent for *Kharif* 1982 and *Rabi* 1983. He had never issued any receipt. The alleged receipts are forged by plaintiff. Dalip, Jai Dayal and Ram Swarup are helping the plaintiff and they forcibly abducted him and brought him to village Bhind, where brother of aforesaid persons was posted as a Jailor and his signatures were obtained on some blank papers forcibly under threat and coercion. The defendant pleaded for dismissal of the suit.
6. The plaintiff filed replication, reiterating all the averments of the plaint while denying averments of written statement.
7. Following issues in civil suit No.1080/1985 were framed by the learned trial Court:-
 1. Whether the plaintiff is in cultivating possession as a tenant under the defendant on the payment of Rs.1000/- only cash rent for the land in question on the grounds as alleged, if so its effect? OPP.
 2. Whether the suit is not maintainable in the present form?
OPD



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-5-

3. Relief.

8. During the pendency of the suit, Rumal Kaur, plaintiff died and her successors-in-interest were brought on record as plaintiffs.
9. The evidence was led by the parties to the suit. Learned trial Court dismissed the suit wherein issue No.1 was decided against the plaintiff and in favour of the defendant by holding that the Rumal Kaur, plaintiff had surrendered possession over the suit property in favour of the defendant vide *Rapat Roznamchas* No. 66, 67 and 69 dated 22.10.1981 Ex. DW3/1, Ex. DW3/2 and Ex.DW3/3.
10. During the pendency of the first appeal, Ghan Shyam Dass died and Mahabir Dass moved an application for impleading him as defendant. The said application was allowed vide order dated 08.04.2005 and Mahabir Dass was ordered to be impleaded as defendant in place of Ghan Shyam Dass. However, due to inadvertence, name of Ghan Shyam Dass was mentioned as defendant in the head note of the impugned judgment and decree dated 22.04.2006, rendered by learned First Appellate Court.
11. The learned First Appellate Court dismissed the first appeal and upheld the findings of learned trial Court by holding that the receipts Ex. PW-9/B dated 22.03.1982 and Ex. PW-9/E dated 7.7.1983 regarding payment of rent to the defendant by Rumal Kaur, plaintiff for the crop *Kharif* 1981 and *Rabi* 1982 and *kharif* 1982 and *Rabi* 1983 respectively, are not proved whereas the plaintiff was not in cultivating possession since she delivered the possession in favor of the defendant vide *Rapat Roznamchas* Nos. 66,67 and 69 Exs. DW3/1 to DW3/3 dated 22.10.1981.



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-6-

12. The RSA-2115-2006, was admitted against impugned judgment and decree dated 22.04.2006 on the following substantial questions of law:-

- “(a) Whether a Receipt duly proved by examining its scribe and Hand-writing Expert can be disbelieved merely on the basis of denial of the person issuing the same?
- (b) Whether it was safe to place unstinted reliance upon *Rapat Roznamchas* Ex. DW-3/1 to Ex. DW-3/3 bearing thumb-impressions of a rustic lady alleged to have been obtained by deceit and mis-representation?
- (c) Whether the Receipt Ex. DW-9/E dated 7.7.1983 issued by Ghan Shyam Dass landlord in token of receipt of rent of *Kharif 1982 and Rabi, 1983* falsifies the claim of the respondent that Rumal Kaur had surrendered possession of the land in dispute on 22.10.1981?
- (d) Whether the findings of facts recorded by the Ld. Courts below making random observations and on wrong appreciation of the material evidence on record, enjoy the sanctity or concurrent findings so as to be immune to challenge and interference in the second appeal?”

13. At the time of admission of RSA No.2115 of 2006, on 27.09.2007, it was also ordered that “In the meantime, the parties shall maintain *status quo* with regard to possession over suit land.”

14. RSA No.973 of 2010 arises out of dismissal of appeal filed by the appellants/plaintiffs vide impugned judgment and decree dated 18.09.2009 of



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-7-

the First Appellate Court which had been filed against dismissal of the civil suit No. 17 of 1987/2007.

15. The civil suit No.17 of 1987 for declaration and permanent injunction as consequential relief had been filed that the plaintiff and Jai Singh, her husband were in continuous cultivating possession of land comprising of *Khewat* No.23, *Khatuni* No.23, Rect No.9 Kila No.24(3-16), 25(3-0), Rect. No.13 Killa No.4(5-10),5/1(6-16), Rect. No.6 Killa No.23 (4-4), Rect. No.1 Killa No.21(4-8), Killa No.22(5-18), Rect. No.9 Killa No.3 (4-17), 9 (8-0) total killas 9 and measuring 46 *kanal* and 9 *marla* and *Khatuni* No.25 Rect. No.9 Killa No.7(3-9), 8(8-2), 10(8-0), 11(8-0), 12(8-0), 13(8-0), 14(7-0), 17(5-0), 18(8-0), 19(8-0), 20(8-0), Rect. No.10, Killa No.3(7-18), 7(8-0), 4(8-0) total killas 14 and measuring 103 *kanal* 9 *marla* as per agreement dated 24.01.1979, in the revenue record, the plaintiffs are mentioned as *Mujara Gair Marusi* (tenant at will). The plaintiff prayed that she be declared as owner in possession of suit property measuring 103 *kanal* 9 *marla* out of total land measuring 149 *kanal* 18 *marla* situated in the revenue estate of village Kharkhari Bhiwan, Tehsil and District Rewari. The plaintiff also prayed that grant of injunction restraining the defendant from interfering in any manner in the suit property.
16. The facts of the civil suit No.17 dated 18.11.1987 filed by Rupal Kaur, plaintiff are that earlier Jai Singh; her husband was in continuous cultivating possession of the suit property and after his death, she was in cultivating possession. Their names entered in the revenue record as '*Mujara Gair*



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-8-

Marusi’ (tenant at will) of the suit land but their possession is sufficiently long and they have become owner in possession because;

- (a) There was an oral agreement between defendant that the plaintiff can continue to cultivate the land and pay the rent and she would not be ejected from the tenancy.
- (b) She had incurred heavy expenditure in the improvement of suit land as they had constructed a bore and installed a tubewell and made the land permanently *Chahi*, their tenancy is recorded in writing dated 24.01.1979. The electric connection was also obtained by the plaintiff with her own expenses.
- (c) There was huge chunk of agricultural land with the defendants but had no means to cultivate and Jai Singh, husband of the plaintiff approached the defendants to cultivate the land and the possession was delivered to him accordingly.
- (d) Defendants themselves admitted that the plaintiff has the right to occupy the land, therefore, the defendants were estopped from claiming any right, title or interest over the suit land.
- (e) In view of the oral agreement between the parties, the ejectment order against the plaintiff by the Court of Assistant Collector, Ist Grade, Rewari, is wrong and the parties are bound by the oral agreement. It was further pleaded that as per the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, (for short-the Act, 1952), the plaintiff is required to be recorded as occupancy tenants over the suit land and entitled to be declared as owner in possession of suit



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCF-885-2010 and CRM-M-32841-2010**

-9-

land. The plaintiff approached the defendants to get her name recorded in the revenue record as owner in possession initially, but they postponed the matter on one pretext or the other and on 13.11.1987, they refused to accede her request which necessitated the filing of the suit.

17. The defendants in written statement contested the suit by raising preliminary objection of its maintainability and that the suit is barred under Order II Rule 2 of Code of Civil Procedure (for short-CPC), plaintiff had no *locus standi* and cause of action to file the suit and that the suit was liable to be stayed under Section 10 of the CPC as the previous suits titles as Rimal Kaur vs. Ghanshyam Dass, and Rimal Kaur vs. Dharam Singh, were based on similar facts. It was also averred that the Murti Thakurji Virajman Aasthal Baba Mohan Dass, Bharawas (hereinafter referred to as 'Murti Thakurji') had not been arrayed and the suit bad for non-joinder of necessary parties (later on Murti Thakurji was impleaded as defendant No.2). On merits, the defendants pleaded that plaintiff had not been in possession after *Kharif* 1981 as the possession had already been transferred in the name of the Murti Thakurji. Jai Singh and Rimal Kaur cultivated the suit property for few years thereafter, they surrendered the possession and in this regard *Rapat Roznamchas* Nos.66, 67 and 69 were recorded in favour of Murti Thakurji. However, in *Rabi* 1982, the plaintiff in connivance with revenue officials obtained *Khasra girdawari* in her favour of land measuring 103 *kanal* 7 *marla* without giving them notice. No agreement dated 24.01.1979 was executed between the parties. The defendants never permitted the plaintiff to obtain electric connection on



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-10-

her name. Property is owned by Murti Thakurji and Mahant was not having any right to claim admission on behalf of Murti Thakurji. Mahant was not competent to enter into compromise on behalf of Murti Thakurji. In civil suit No.1080 filed on 12.08.1985, the plaintiff herself claimed to be *Gair Marusi* tenant and never claimed occupancy rights.

18. The replication was filed by the plaintiff reiterating the pleadings and controverting the averments of written statements.
19. During the pendency of civil suit No.17 of 1987, plaintiff, Rupal Kaur died and her legal heirs/successors-in-interest were brought on record.
20. The learned trial Court framed following issues in civil suit No.17 of 1987:-
 - (1) Whether the plaintiffs have become owners and in possession of the suit land as alleged ? OPP
 - (2) Whether the civil court has no jurisdiction to try the present suit? OPP
 - (3) Whether the suit is not maintainable in the present form? OPD
 - (4) Whether the suit is barred under Order II Rule 2 CPC? OPD
 - (5) Whether the plaintiffs are stopped from filing the present suit by their own act and conduct ? OPD
 - (6) Whether the Murti Thakurji is a necessary party? OPD
 - (7) Whether the suit of the plaintiff is time barred? OPD
 - (8) Relief.
21. Evidence was led by the parties to the suit.
22. Learned trial Court rendered findings on issue Nos.1, 2 and 4 against the plaintiffs by holding that the Rupal Kaur, plaintiff had herself surrendered the



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-11-

possession over the suit land and she cannot be held to be in possession. In order to claim ownership being occupancy tenant, the plaintiff was required to fulfill the criteria as mentioned in Section 5 of Punjab Tenancy Act, 1887 (for short-the Act, 1887) and Section 3 of the Act, 1952 which the plaintiff failed to prove and that suit was barred under Order II Rule 2 CPC. The civil suit was thereby dismissed vide judgment and decree dated 20.02.2007.

23. Findings of the learned trial Court were upheld by the learned First Appellate Court vide impugned judgment dated 18.09.2009.
24. The regular second appeal No.973 of 2010, against impugned judgment dated 18.09.2009 was admitted on the following substantial questions of law :-

“(i) Whether finding on possession of the land in dispute could be returned against the appellants on the basis of Reports Ex.DW-3/1, Ex.DW-3/2 and Ex.DW-3/3 which had also been relied upon against them in the earlier litigation and the authenticity whereof being sub-judice in RSA No.2115 of 2006 having been admitted and still pending?

(ii) Whether the findings recorded by the Ld. Courts below contrary to unimpeachable and authentic documentary evidence on record enjoy the sanctity of concurrent findings so as to be immune to challenge and interference in the second appeal ?”



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-12-

25. At the time of admission of RSA No.973 of 2010, vide order dated 12.03.2010, it was also directed that “*status quo* with regard to possession shall be maintained by the parties.”
26. COCP No.885 of 2010 has been filed by the appellants Sansar Devi @ Sansar Bala and others, contending that the defendants had violated the order of *status quo* dated 12.03.2010 regarding possession by illegally entering in the suit property on 25.04.2010 at about 10-11 AM along with 4-5 tractors and had destroyed all the standing crops, fences, removed poles, broke the lock of *kothri*, damaged the agricultural equipments and took away irrigation pipes regarding which the matter was reported to the Police by way of filing written complaint (Annexure P-4).
27. COCP No.885 of 2010 was ordered to be heard along with RSA No.2115 of 2006 vide order dated 03.10.2010 passed in this COCP.
28. On the basis of written complaint Annexure P-4 (appended with COCP No.885 of 2010), FIR No.83 dated 08.05.2010 had been registered under Sections 147, 149, 323, 427, 440, 447, 379 and 506 of IPC at Police Station Ram Pura, District Rewari, Haryana (Annexure P-1, appended with CRM-M-32841-2010) against Mahant Mahabir Dass Chela Baba Ghan Shyam Dass and others. Mahant Mahabir Dass and others had filed CRM-M-32841-2010 for quashing of FIR No.83 dated 08.05.2010 (Annexure P-1).
29. CRM-M-32841-2010, was ordered to be heard along with RSA No.2115 of 2006 and RSA No.973 of 2010 vide order dated 1.12.2011, passed in this CRM-M.



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-13-

30. I have heard Mr. Amit Jain, Sr. Advocate, learned counsel for the appellants (in both RSAs, petitioner in COCP and respondent in CRM-M) and Mr. Sanjiv Kumar Aggarwal, Advocate, counsel for the respondent (in both RSAs, respondent in COCP and petitioner in CRM-M).
31. Mr. Amit Jain, Sr. Advocate, learned counsel for the plaintiffs submitted that the learned trial Court and learned First Appellate Court erroneously dismissed the suit and first appeal. In fact, Jai Singh, father of the plaintiffs and husband of deceased Rumal Kaur (original plaintiff), had been in cultivating possession of the 122 *kanal* 16 *marla* of land since 1966 as tenant under Ghan Shyam Dass defendant, predecessor-in-interest of Mahabir Dass, defendant. After the death of Jai Singh, Rumal Kaur, his widow had been in continuous possession thereof, as tenant under said Ghan Shyam Dass, during her life time on payment of cash rent of Rs.1000/-. Ghan Shyam Dass continued to receive rent for the entire land till 1983 and last receipt issued by him in token of having received rent till 1983 is Ex. PW-9/E. Vide receipt PW-9/B rent was received for *Kharif* 1981 and *Rabi* 1982 and vide receipt PW-9/E rent was received for *Kharif* 1982 and *Rabi* 1983. There is no justification for disbelieving the receipts Exs. PW-9/B and PW-9/E which bears the signatures of Ghan Shyam Dass, defendant. There is no explanation from Ghan Shyam Dass how his signatures are obtained on these receipts. Total per annum rent was @ of Rs.1000/- but vide these receipts, an amount of Rs.800/- each, as rent was paid because vide receipt Ex. PW7/C dated 17.09.1966, Rs.4,000/- was paid as rent for 20 years which was Rs.200/- per month from crop *Kharif* 1966 to *Rabi* 1986 as per lease deed dated 29.08.1966. Thereafter, Ghan Shyam



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-14-

Dass refused to receive rent and Rimal Kaur had to take recourse to the provisions of Section 14A (iii) of Punjab Security of Land Tenure Act, 1956 for depositing the rent. Ghan Shyam Dass was very influential person and he managed to get the entries in the cultivation column regarding an area of 27 *kanal 7 marla* out of 122 *kanal 16 marla* of land changed in the revenue record in his favour from *Kharif* 1982, in connivance with revenue officials. In spite of change in the revenue record, Rimal Kaur, plaintiff (since deceased) and thereafter, her successors-in-interest remained in possession. Ghan Shyam Dass, defendant never came in actual physical possession of suit property.

32. Learned counsel for the plaintiffs further submitted that learned trial Court and learned First Appellate Court had erroneously placed unstinted reliance upon *Rapat Roznamchas* No.66, 67 and 69 vide Ex. DW3/1, DW3/2 and DW3/3 dated 22.10.1981 and failed to appreciate that Rimal Kaur, plaintiff being illiterate and rustic lady, her thumb impressions could have been easily procured by revenue officials on any pretext at the instance of Ghan Shyam Dass. At the instance of Ghan Shyam Dass, defendant, DW-3 Nirjan Lal Patwari secured her thumb impressions on some *Rapat Roznamchas* stating that she relinquished her tenancy rights in respect of the land in dispute in favour of Ghan Shyam Dass. When she came to know about it, she lodged complaint against the DW-3 Nirjan Lal Patwari with local Police but nothing came out of that complaint. She also moved application before the Assistant Collector IInd Grade, Rewari, seeking correction of entries of *Khasra Girdawari* which was eventually dismissed vide order dated 05.08.1985. Ex.DA because by that time, on the basis of *Rapat Roznamchas*, *jamabandi*



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-15-

for the year 1983-84 Ex.PQ had been prepared and entries of *Khasra Girdawari* till *Rabi* 1985 had merged in the *jamabandi*. Ghan Shyam Dass intended to forcibly dispossess the plaintiff from the suit land.

33. Learned counsel for the appellants further submitted that learned trial Court and learned First Appellate Court failed to appreciate that Jai Singh had been in cultivating possession of disputed property from 1966 until 1971 and after his demise in 1971, his widow, Rumal Kaur had been in cultivating possession on the same terms and conditions and had paid rent regularly. Had Rumal Kaur surrendered the possession over suit property on 22.10.1981, the rent up to *Rabi* 1983 vide receipt Ex. PW-9/E would not have been paid. This falsifies the claim of the defendant that possession was delivered to Ghan Shyam Dass on 22.10.1981. There was no occasion for her to surrender the possession of the disputed property in the year 1981. In fact, Ghan Shyam Dass misused his influence and took undue advantage of illiteracy of Rumal Kaur, managed to get the revenue entries of cultivation of the land changed in his favour in connivance with DW3 Niranjan Lal Patwari concerned w.e.f. 1982. The change in the *Khasra Girdawari* was kept a guarded secret and Ghan Shyam Dass, defendant continued to receive rent as proved from rent receipts Exs. PW-9/B and PW-9/E from *Kharif* 1981 to *Rabi* 1983. These receipts were issued by Ghan Shyam Dass under his signatures and thereafter, he stopped receiving rent and only then Rumal Kaur, plaintiff came to know of this fraud. The receipts Ex.PW-9/B and Ex.PW-9/E are duly proved on record but learned trial Court and learned First Appellate Court failed to appreciate statements of witnesses and erroneously held that these receipts are not proved. Signatures of



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-16-

Ghan Shyam Dass, defendant on these receipts have been proved by examining the handwriting Expert, PW4 Som Nath Aggarwal, PW11 Krishana Bala and PW9 Ram Swarup. There is no explanation from Ghan Shyam Dass, defendant for putting his signatures on these receipts in favour of Rimal Kaur, plaintiff.

34. Learned counsel for the plaintiffs also submitted that civil suit No.367 of 1981 which was instituted by plaintiff Rimal Kaur on 30.03.1981 against Dharam Singh, Nihal Singh, Rohtash Singh and Kishan Singh son of Sultan Singh, for permanent injunction restraining these defendants from interfering in her possession over land measuring 149 *kanal* 18 *marla* as per *jamabandi* for the year 1978-79 as tenant under Sh. Ghan Shyam Dass Chela Sh. Bhagwan Dass. The said suit had been decreed vide judgment Ex.PN and Rimal Kaur, plaintiff was held in possession over the suit land as tenant under Ghan Shyam Dass. This also proved that Rimal Kaur was in cultivating possession as tenant over whole of the suit property and the property was not in cultivating possession through her alleged sub-lettees.
35. Learned counsel for the plaintiff while addressing arguments in RSA No.973 of 2010 further submitted that the trial Court failed to appreciate that Ghan Shyam Dass filed civil suit against Rimal Kaur for recovery of rent for the sum of Rs.3,000/- and for her eviction from land measuring 147 *kanal* 18 *marla* including disputed property which is subject matter of civil suit No. 17 dated 18.11.1987 before the Assistant Collector Ist Grade, Rewari but the dispute was compromised and Ghan Shyam Dass, defendant got his statement Ex.PX/2 recorded to the effect that he did not want to pursue the suit and same be dismissed as withdrawn and that he would never eject Rimal Kaur from



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-17-

land in dispute. The suit was accordingly dismissed as withdrawn vide order dated 24.01.1979 Ex. PX/3. Defendant No.1 executed one more lease deed dated 19.02.1969 Ex. PW9/1 accepting Rimal Kaur as an occupancy tenant with an undertaking never to back out from the compromise and to get her recorded as occupancy tenant in the revenue record. In view of that Rimal Kaur, plaintiff and his successors-in-interest could not be denied the ownership rights being occupancy tenants.

36. Learned counsel for the plaintiff further submitted that, on 22.10.1981 Panchayat was convened whereby, thumb impressions of Rimal Kaur were obtained on *Rapat Roznamchas* Ex. DW3/1, Ex.DW3/2 and Ex. DW3/3. There is nothing on record that contents of the said *Rapat Roznamchas* were explained to her and she voluntarily executed the *Rapat Roznamchas* in favour of the defendants. The findings recorded by the learned First Appellate Court, the appeal pertaining to civil suit No.17 of 1987 by holding that the possession had already been delivered, stands settled in civil suit No.1080/1985. Since the findings of the First Appellate Court rendered in appeal against dismissal of civil suit No.1080/1985 had been challenged in appeal No.RSA-2115-2006, therefore, the said findings could not have been taken into consideration. The learned trial Court erroneously placed reliance upon entries dated 22.10.1981 in *Rapat Roznamchas* No. 66, 67 and 69 Ex.DW3/1 to Ex. DW3/3 and failed to appreciate that at the time of passing impugned judgment dated 20.02.2007, the findings of learned trial Court and learned First Appellate Court in civil suit No.1080/1985 had already been under challenge in RSA-2115-2006. The plaintiffs are entitled to be declared as owners because their possession as



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-18-

occupancy tenants is continuously uninterrupted. Rumal Kaur (original plaintiff) never surrendered her possession.

37. Learned counsel for the plaintiff further submitted that the learned trial Court and learned First Appellate Court had erroneously held that suit is barred under Order II Rule 2 CPC. The earlier suit No. 1080/1985 filed by the plaintiff was that, plaintiff is in possession as tenant and entries in the column of cultivation in the revenue record were wrongly changed and she also sought decree for permanent injunction as a consequential relief restraining the defendant from interfering in her possession whereas, the civil suit No.17 dated 18.11.1987 had been filed seeking declaration that plaintiff had become owner in possession in dispute property that also includes subject matter of earlier instituted suit No.1080/1985 i.e. land measuring 27 *kanal* 10 *marla* whereas, subject matter of civil suit No. 17 dated 18.11.1987 pertains to land measuring 103 *kanal* 9 *marla* and suit could not have been held as barred under Order II Rule 2 CPC especially when the decision of earlier suit No.1080/1985 had not attained finality.
38. Learned counsel for the plaintiffs further submitted that proceedings under Section 145 Code of Criminal Procedure (for short-Cr.P.C) had been initiated against the parties by Sub Divisional Magistrate, when the plaintiffs had presented copy of stay orders passed by this Court, the proceedings were adjourned *sine die*. The plaintiffs had sown seasonal crop over 5 acres of land. On 25.04.2010 at about 10AM when Krishana Bala (plaintiff/PW11) along with her son and others were irrigating the crop, Mahant Mahabir Dass, successor-in-interest of Mahant Ghan Shyam Dass, defendant along with



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-19-

Satvir Singh, Ram Avatar, Kalu Ram and others came on the spot with 5 tractors and damaged the standing crop and agricultural equipments, broke the lock of *kothri* and other things, took away 30 pipes, wire and poles, caused damage to the tune of Rs.1 lakh. While going away they also installed two sign boards scribing “Land of Baba Mohan Dass agricultural farm Bhiwan Kharkhari”. When Krishana Bala and others raised alarm, Narinder Singh, Ajit Singh, Devi came on the spot and saved them. Mahabir Dass and others committed offence regarding which FIR No.83 dated 08.05.2010 had been registered under Sections 147, 149, 323, 427, 440, 447, 379 and 506 of IPC at Police Station Ram Pura, District Rewari, Haryana (Annexure P-1) against them. Learned counsel for the plaintiffs prayed for initiating contempt proceedings against the defendants and the persons named in the FIR for violating the stay orders of this Court by way of acceptance of petition i.e. COCP-885-2010 and for vacation of stay on the criminal trial in the abovesaid criminal case by way of dismissal of petition i.e. CRM-M-32841-2010.

39. *Per contra*, learned counsel for the defendant submitted that Rimal Kaur, plaintiff had relinquished her possession over the property which is subject matter of both the suits, on 22.10.1981 vide *Rapat Roznamchas* No.66, 67 and 69 Ex. DW3/1, DW3/2 and DW3/3, respectively and thereafter, the property continued to be in possession of defendant and rent was never paid by the plaintiff thereafter. The receipts Ex. PW-9/B dated 22.03.1982 and Ex. PW-9/E dated 07.07.1983 were forged and fabricated and were not proved from the statements of the witnesses. The defendant never issued any receipts. Learned trial Court rightly held that receipts are not proved and plaintiff had not



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCp-885-2010 and CRM-M-32841-2010**

-20-

pleaded and proved how fraud was committed upon her when she thumb marked entries in the *Rapat Roznamchas*. The fraud is to be proved by leading cogent and convincing evidence. The statements of witnesses examined by the plaintiff are not reliable. They were interested witnesses who deposed in favour of plaintiff. Ghan Shyam Dass, defendant was not in a position to execute any agreement/compromise in favour of the plaintiff because owner of the suit property is Murti Thakurji. The plaintiff cannot claim ownership rights over the suit property. She and her successors-in-interest failed to fulfill the criteria as stated in Section 5 of the Act of 1887 and Section 3 of the Act of 1952. The plaintiff had never challenged the entries in *Rapat Roznamchas* No. 66, 67 and 69 vide Ex. DW3/1, DW3/2 and DW3/3 respectively, dated 22.10.1981. He vehemently prayed for dismissal of both the regular second appeals, contempt petition i.e. COCP-885-2010 and acceptance of quashing petition i.e. CRM-M-32841-2010, since the plaintiffs were never in possession over the suit property at the time of filing of the civil suits. Therefore question of violation of stay order or interference in their possession do not arise at all.

40. I have given considerable thought to the rival submissions and have gone through the records, statements of witnesses and documents carefully.
41. Substantial questions of law Nos. A to D in RSA No.2115 of 2006 and Nos.1 and 2 in RSA No. 973 of 2010 are interconnected and are being taken up together for convenience.
42. There are concurrent findings of learned Courts below that Rupal Kaur, plaintiff relinquished possession over the suit property on 22.10.1981 in the presence of DW-3 Niranjana Dass, Patwari and others and entries in the *Rapat*



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-21-

Roznamcha Nos. 66, 67 and 69 were made vide Ex. DW3/1, DW3/2 and DW3/3 respectively, dated 22.10.1981.

43. In civil suit No.1080 of 1985, the plaintiffs have examined 13 witnesses. Plaintiff No.2 Krishana Bala; daughter of Rimal Kaur was examined as PW11. The defendants have examined 7 witnesses including the testimony of Ghan Shyam Dass, defendant as DW7.
44. Krishana Bala (PW11) in her testimony corroborated the averments of plaint and she specifically stated that suit land was cultivated earlier by her father and thereafter by her mother, Rimal Kaur since 1965 at the annual rent of an amount of Rs.1000/-. The rent regarding the suit land was received by the defendant up to 1983. She also proved the receipt Ex.PW-9/E and further stated that Ghan Shyam Dass had never been in possession of the suit land.
45. The statement of PW-11 Krishana Bala is also corroborated by PW1 Pratap Singh, PW2-Rohtash, PW10-Dalip Singh.
46. PW2-Rohtash during cross examination admitted that he had filed suit for recovery of money against Ghan Shyam Dass, defendant which had since been dismissed.
47. PW10-Dalip Singh during cross examination stated that he and his brother Jai Dayal filed a civil suit pertaining to 11 killas of land of temple against Ghan Shyam Dass, defendant on the basis of agreement to sell and that suit had been dismissed by the Court of Additional Sessions Court and appeal filed by him is pending in this Court.
48. PW3 Mahinder Singh, Upper Division Clerk of Haryana State Electricity Board proved that meter No. BAAG 569 was released on 31.08.1975.



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-22-

49. PW4 Som Nath Aggarwal, Handwriting and Finger Print Expert examined the thumb impressions and stated that the disputed thumb impressions mark Q1 and Q2 on the lease deed dated 13.8.1965, mark Q3 on the lease deed dated 06.07.1966, mark Q4 on the lease deed dated 19.08.66, mark Q5 on the receipt dated 06.07.1966, mark Q6 on the receipt dated 08.07.1966, mark Q7 on the receipt dated 17.09.1966, mark Q8 and 29 on the agreement dated 04.08.1970 were compared by him, with the sample thumb impressions mark SA of Ghan Shyam Dass taken in the court on 11.04.1989 in original as well as with photographic enlargements Ex. PW-4/1 to Ex. PW-4/10. He has opined that the disputed thumb impressions mark Q1 to Q99 and sample thumb impression mark SA were of one and the same person. He has also stated that the disputed signatures marks A1, A2 and A2A on the lease deed dated 13.08.1965, mark A3 on the lease-deed dated 06.07.1966, mark A4 on the lease deed dated 29.08.1966, marks A5 to A7 on the agreement dated 29.02.1964, mark A8 on the receipt of the year 1981-82, mark A9 on the receipt dated 28.04.1981, mark A10 on the receipt dated 08.07.1966, mark A11 on the receipt dated 17.09.1966, mark A12 on the receipt dated 12.03.1962, mark A13 on the receipt dated 20.07.1980, mark A14 and mark A15 on the agreement dated 24.01.1979, mark A16 on the receipt dated 15.06.1978, mark A17 on the receipt dated 07.07.1983, marks A18 and A19 on the agreement dated 04.08.1970, were compared by him with the comparison signatures of Ghan Shyam Dass mark S1 present on the back of the stay order dated 16.08.1985 and also with specimen signatures mark S2 to S6 taken in the court on 11.04.1989, in original as well as with photographic enlargements Ex. PW-



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-23-

4/11 to Ex.PW-4/17. He has opined that the disputed signatures mark A-1 to A-19 and comparison signature and specimen signatures mark S2 to S6 were one of the same person. He has proved his report Ex. PW-4/27.

50. PW4 Som Nath Aggarwal when subjected to cross examination stated that he had not examined the body of the writing of the receipt mark X.
51. PW5 Banvari Lal also proved signatures of Ghan Shyam Dass, defendant on agreement Ex. PW5/A.
52. PW6 Ratan Lal Stamp Vendor stated that as per entry No. 2755 dated 08.10.1969 in his register, stamp paper was given to Ghan Shyam Dass, defendant through Bhagwan Dass for agreement.
53. PW7 Durga Prasad stated that lease deed dated 13.08.1965 was scribed by him on the instructions of Ghan Shyam Dass, defendant.
54. PW8 Kapil Kumar also proved entry No.64 dated 19.2.1970 vide Ex. PW8/A in his register and when subjected to cross examination, he stated that nothing was written in his presence.
55. PW9 Ram Swarup proved his signatures on the lease deeds dated 06.07.1966, 29.08.1966 and 04.08.1970. He also proved his signatures on receipt dated 18.04.1981 Ex. PW9/A and receipt dated 12.03.1982 Ex. PW-9/B as well as documents and receipt Exs. PW9/C, PW9/D and PW-9/E.
56. Cross examination of PW9-Ram Swarup is material piece of evidence. He denied any litigation pending between his brothers Dalip and Jai Dayal and Ghan Shyam Dass, defendant. He also expressed ignorance regarding filing of civil suit by his brother against Ghan Shyam Dass, defendant and that the same was dismissed. He also expressed his ignorance regarding two cases pending



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-24-

between his son Rohtash and Ghan Shyam Dass, defendant in the Court of SDM. At another stage of his cross-examination, he admitted that a suit was filed by his brothers Dalip and Jai Dayal against Ghan Shyam Dass, defendant on the basis of agreement. He also stated that he could not say as to by whom receipt dated 18.04.1981 was scribed. He also was unable to disclose whether any payment was made at that time or not. He also deposed that he could not say whether and by whom receipt Ex. PW9/A was scribed. He also stated that he could not disclose whether any payment was made at that time or not.

57. PW12 Satish Kumar brought the summoned file titled Ghan Shyam Dass vs. Rimal Kaur decided on 21.01.1979.
58. PW13 Sumer Singh proved the copy of plaint vide Ex. PW-13/A of the summoned file of case title Ghan Shyam Dass vs. Rimal Kaur.
59. In order to rebut the evidence of these witnesses, Ghan Shyam Dass, defendant stepped into the witness box as DW7 and corroborated the averments of written statement. He stated that he had been cultivating the suit land for the last 12-13 years. About 10-12 years back, a Panchyat was held in the temple at Bharawas. Dharam Singh, Nihal, Rohtash and Rimal Kaur and other persons were present in the Panchayat and in that Panchayat, these persons relinquished the possession of the land of the temple. They also gave statements before the Patwari, appended their thumb impressions and nothing was ever taken by him from Rimal Kaur, plaintiff or her children regarding the suit land after that day. The suit land had not been cultivated by Rimal Kaur and her children thereafter. He also specifically stated that he was kidnapped by Nihal, Rohtash and Dalip and taken to village Bhind and his thumb



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-25-

impression was forcibly taken on stamp papers and no fraud was played upon the persons who relinquished their possession on the land and appended their thumb impressions.

60. DW1 Dharam Singh, DW-4 Gajender, DW5 Balbir, and DW6 Mani Ram corroborated the statements of DW7 Ghan Shyam Dass, defendant.
61. Defendants also examined DW3 Niranjana Lal who was deputed in the year 1981-82 as Patwari of Halqua Bhandor. At the time of recording his statement, *Rapat Roznamchas* for the year 1981-82 was produced in the Court by DW2 Dhani Ram Patwari. DW3 Niranjana Lal, specifically stated that at that time village Kharkhari Bhiwan was part of Halqua Bhandor. *Rapat Rojnamchas* No.66, 67 and 69 vide Ex. DW3/1, DW3/2 and DW3/3 respectively, dated 22.10.1981 were entered by him with his hand. *Rapat Roznamcha* No.66 was thumb marked by Rimal Kaur and Bhikha Ram, signed by Ram Swarup Nambardar (PW9) and Surendar Nambardar. The contents of *Rapat Roznamchas* were read over to Rimal Kaur and she thumb marked the same after admitting the same to be correct. He further stated that contents of *Rapat Roznamchas* No.67 and 69 were also read over to Rimal Kaur and she thumb marked these *Rapat Roznamchas* after admitting the contents thereof to be correct. He also proved the copies of these *Rapat Roznamchas* vide Ex. DW-3/1, DW-3/2 and DW-3/3. During the cross-examination, he admitted that Nihal Singh was alive on 22.10.1981.
62. In civil suit No.17 of 1987 plaintiffs examined as many as 11 witnesses. PW4 Som Nath Aggarwal, PW5 Banwari Lal, PW6 Rattan Lal Stamp Vendor, PW7 Durga Prashad, PW8 Kapil Kumar Gupta, PW9 Ram Swarup, PW11 Krishana



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-26-

Bala, witnesses of civil suit No.1080 of 1985 are examined in civil suit No.17 of 1987 as PW6, PW3, PW8, PW11, PW9 and PW12, respectively. The record produced by PW3 Mahinder Singh, Upper Division Clerk in HSEB in civil suit No.1080 of 1985 is brought on record by PW4 Gurdial Singh in civil suit No.17 of 1987, when he stepped into the witness box as PW4 and then examined as PW7. PW13 Sumer Singh examined in civil suit No. 1080/1985 is examined in rebuttal in civil suit No.17/1987. Besides these witnesses, plaintiffs examined PW2 Surjeet Singh, PW5 Suraj Bhan and PW10 Umara Singh who in their respective oral testimonies corroborated the statement of Krishana Bala, daughter of Rimal Kaur; original plaintiff. Since their statements are on similar lines in both the civil suits, therefore, for the sake of brevity, there is no need to reproduce their testimonies.

63. Copies of mutation Ex. PT and Ex. PU, its Hindi translation Ex. PT/T and Ex. PU/T, copy of statement of Ghan Shyam Dass, Ex. PV, copy of judgment and decree dated 18.11.1996, Ex. PW and Ex. PX, agreement mark P2 were tendered in rebuttal evidence by the plaintiffs.
64. The defendants examined Niranjana Lal Patwari as DW3 in civil suit No.17 of 1987 and proved the *Rapat Roznamchas* No. 66, 67 and 69 vide Exs. DW3/1, DW3/2 and DW3/3, respectively.
65. Seven defendant witnesses are examined in civil suit No. 17 of 1987. Besides the testimony of Niranjana Lal Patwari DW3, the remaining witnesses who are examined in this civil suit are Gowardhan, copyist DW1, Puran Lal Clerk (DW2) who proved the certified copy of plaint of civil suit titled Rimal Kaur vs. Ghan Shyam Dass as Ex. D1, Sh. Sunil Yadav, Advocate (DW4) who



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-27-

identified signatures of his father Surender Singh Nambardar On *Rapat Roznamchas* Nos. 66, 67 and 69 vide Exs. DW3/1, DW3/2 and DW3/3, respectively. He also stated about his presence at that time and that contents of these rapats were read over to Rumal Kaur, who put her thumb impressions on the same. Puran Singh (DW5), Ram Avtar (DW6) and Dalip Singh Nambardar, supported the case of the defendants. During the proceedings of the civil suit No.17/1987, Ghan Shyam Dass, defendant had died. The certified copy of his statement recorded in civil suit No. 1080/1985 is exhibited vide Ex. DW20 in civil suit No.17/1987.

The documents tendered by the defendants are as under:-

Ex. D1-	Pedigree table
Ex.D2-	<i>Jamabandi</i> for the year 1906-07
Ex. D3-	<i>Jamabandi</i> for the year 1938-39
Ex. D4-	<i>Jamabandi</i> for the year 1961-62
Exs. D5, D6 and D7-	Rapat Nos.75, 78 and 79
Ex. D8-	Rapat Nos.80-81
Ex. D9	Pedigree table
Ex. D10-	Mutation No.2325 dated 02.08.1988
Exs. D11 and D12-	Judgment and decree dated 24.01.1994
Ex. D13-	General Power of Attorney dated 10.10.1983
Ex. D14-	Mutation No.182 dated 09.12.1987
Exs. D15 to D18-	<i>Jamabandis</i>
Ex. D19-	<i>Khasra Girdawari</i>



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-28-

66. In additional evidence, (civil suit No. 17 of 1987) a few more documents were tendered by the defendants which are as under;-

Ex. D20-	Statement of Ghan Shyam Dass dated 13.8.1993 of in civil suit titled Rumal Kaur vs. Ghan Shyam Dass
Ex. D21-	Order dated 16.05.2002 in civil suit titled Balram Dass vs. Mahabir Dass
Ex. D22-	Compromise dated 16.05.2002 in civil suit titled Balram Dass vs. Mahabir Dass
Exs. D23 and D24.	Judgment and decree dated 22.04.2006
Exs. D25 and D26	Order dated 08.04.2005 and 23.12.2005 in civil suit titled Sansar Devi vs. Ghan Shyam Dass

67. In rebuttal to additional evidence of the defendants, plaintiffs examined Rajesh Kumar, official from SDM Office (PW14) who proved the extract of assessment register vide Ex.PW14/1 to Ex. PW14/4, Om Parkash Meter-Reader who proved receipts Ex. PW15/1 to Ex. PW15/14 and bills Ex. PW15/A to Ex. PW 15/G. Copy of sale deed mark PXY-1 is also tendered by the plaintiffs in rebuttal.

68. Murti Thakurji is undisputed owner of suit property. Earlier Mahant Ghan Shyam Dass, defendant was managing the affairs of temple and after his death, the affairs of the temple were being managed by Mahant Mahabir Dass Chela Mahant Ghan Shyam Dass. The main question is whether the plaintiffs were *Marusi* (tenant) or *Mujara Gair Marusi* (tenant at will) over the suit property



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-29-

and at the time of filing of civil suits, they were in possession over the suit property. The plaintiffs have proved lease agreement Exs. PW10/2, PW11/1 to PW11/3, PW9/1 and receipts Ex. PW7/B, Ex. PW3/6, Ex. PW3/7, Ex. PW3/8 and Mark A (in civil suit No.17 of 1987/2007). Undisputedly, vide lease deed Ex.PW3/1, the land was leased from 1965 to 1975 with stipulation that if rent for a period of 2 years continuously is not paid, tenant shall be liable to be evicted. Vide lease deed Ex. PW11/2, for a period from 1966 to 1981, the parties agreed that the lease period can be further extended otherwise the tenant shall be liable to handover the possession. Vide agreement Ex. PW11/3, lease deed is extended from 1966 to 1986. Thus, the tenancy in favour of Jai Singh and thereafter in favour of his wife Rupal Kaur, was for a fixed period and was not indefinite. In the copy of civil suit No.1080 of 1985, Rupal Kaur, plaintiff nowhere pleaded that she was in possession over suit property as *Marusi* or occupancy tenant rather she claimed that the tenancy was on payment of an amount of Rs.1,000/- per annum. The plaintiff in civil suit No. 17 of 1987, claimed agreement of the year 1979 allegedly signed by Ghan Shyam Dass, defendant that suit property would not be vacated. In the said agreement, there was no reference of above noted 3 lease deeds. Therefore, learned trial Court in civil suit No.17 of 1987 and learned First Appellate Court while deciding the appeal against judgment of learned trial Court dated 20.02.2007 of learned trial Court rendered in the said civil suit correctly concluded that the possession of the plaintiff over the suit property had been as *Mujara Gair Marusi* (tenant at will).



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-30-

69. The case of the plaintiffs is that Rumal Kaur never relinquished the possession over the suit property whereas, the defendant pleaded that Rumal Kaur delivered the possession of the suit property in favor of the defendants vide *Rapat Roznamchas* Nos. 66,67 and 69 dated 22.10.1981. In both the civil suits Niranjn Lal Patwari is examined as DW3 who proved these *Rapat Roznamchas* vide Exs. DW3/1, DW3/2 and DW3/3. In civil suit No.17 of 1987 the defendants examined Sh. Sunil Yadav, DW4, who identified the signatures of his father Surender Singh Nambardar. DW8 Sunil Yadav, (civil suit No.1080) in his statement before the Court also stated that Rumal Kaur was not in possession over suit property it was being cultivated by Mandir. Mandir is in possession since 1981. The entries of *Rapat Roznamchas* Nos. 66, 67 and 69 vide Ex. DW3/1, DW3/2 and DW3/3 dated 22.10.1981 regarding delivery of possession by Rumal Kaur in favour of Mandir, are corroborated by Gajinder Singh (DW4), Balbir son of Lala Ram (DW5) and Ghan Shyam Dass, defendant (DW7) when they stepped into the witness box (in civil suit No.1080). *Khasra Girdawari* Ex. P2 (civil suit No.1080) also proved that Rumal Kaur remain in cultivating possession on some part of the land till *Rabi* 1981 and thereafter, in the column of possession, the defendant i.e. Murti Thakurji is reflected in cultivating possession.
70. The defendants had examined Niranjn Lal Patwari; DW3, who proved the contents of *Rapats Roznamachas* No. 66, 67 and 69 vide Ex. DW3/1, DW3/2 and DW3/3 dated 22.10.1981. The defendants had also examined other witnesses who were present on the spot i.e. Mr. Sunil Yadav, who identified



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-31-

signature of his father Surender Singh Nambardar as well as by examining Gurjinder Singh as DW4 and Balbir as DW5.

71. *Rapat Roznamchas* No. 66 dated 22.10.1981 Ex. DW3/1 is pertaining to land *Khasra* No.6/23, 4 *kanal* 4 *marla* and it recitals proved that on that day Rumal Kaur, widow of Jai Singh, Nihal Singh son of Dalip Singh in the presence of Surender Singh Nambardar, Ram Swarup Nambardar, Bhikha Chowkidar publically suffered statements that they have relinquished possession in favour of Ghan Shyam Dass Chela Sh. Bhagwan Dass Chela Ram Saran Dass with their free consent and Mahant held cultivated *Bajra* in *Khasra* No.6/23 for *Kharif* 1983 and its *Girdawari* be sanctioned in favour of Mahant. There is one civil suit pending in the Court of Sub-Judge, Ist Class, Rewari and one injunction order dated 02.05.1981 is also issued which is in operation and the same be considered as vacated and the writing shall be submitted in the Court. The *rapat* is signed by Nihal Singh, Bhikha Chowkidar, Ram Swarup Nambardar and Surender Singh Nambardar and thumb marked by Rumal Kaur and endorsed by Niranjana Lal Patwari.
72. *Rapat* No. 67 dated 22.10.1981 Ex. DW3/2 pertaining to land bearing *Khasra* No.9/3, 4 *kanal* 17 *marla* of land with similar recitals.
73. The subject matter of *rapat* No.69 dated 22.10.1981 Ex. DW3/3 pertaining to land *khasra* No.8/21-22, 9/7-8-9-10-11-12-13-14-17-18-19-20, 10/3-7 total 113 *kanal* 15 *marla* out of which 4 Killas land bearing *Khasra* No.8/21-22, 10/3-7 is being cultivated by Rumal Kaur individually and remaining is being cultivated jointly by Rumal Kaur and Dharam Singh and its possession was given to Ghan Shyam Dass, defendant and this entry also bears recital that



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-32-

from *kharif* 1981, Mahant Ghan Shyam Dass had sown *Gowar* and *Bajra* and in land bearing Killa No.9/11-12 *Gowar* was sown and the *Girdawari* be entered in the name of Mahant. There is also another recital that except the land *Khasra* No. 8/21-22, 10/3-7 there is a dispute regarding remaining land in the Court of Sub Judge, Ist Class, Rewari and injunction dated 02.05.1981 is issued in the said suit and same be stood vacated and for this purpose, application shall be moved in the Court.

74. Entries in *Rapat Roznamchas* No. 66, 67 and 69 vide Ex. DW3/1, DW3/2 and DW3/3 dated 22.10.1981 were made by DW3 Niranjan Singh Patwari in discharge of his official duties.
75. These entries are public documents under Section 74 of erstwhile the Indian Evidence Act. This Section reads as under:-

Section 74 of Indian Evidence Act

“Public Documents-The following documents are public documents :-

(1) Documents forming the acts, or records of the acts –

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive,

[of any part of India or of the Commonwealth] or, of a foreign country;

(2) Public records kept [in any State] of private documents.”



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-33-

76. Section 74 (1) of Bharatiya Sakshya Adhiniyam, 2023 (for short-BSA) is corresponding to section 74 of erstwhile Indian Evidence Act which reads as under:-

“Section 74. of BSA- Public and private documents.

(1) The following documents are public documents:-

(a) documents forming the acts, or records of the acts-

(i) of the sovereign authority;

(ii) of official bodies and tribunals; and

*(iii) of public officers, legislative, judicial and executive of
India or of a foreign country;*

*(b) public records kept in any State or Union territory of private
documents.*

*(2) All other documents except the documents referred to in sub-
section (1) are private.”*

77. The above referred provisions make it abundantly clear that the documents forming the acts or records of acts of the state and public functionaries and transactions which such functionaries are required to enter in books/registers in the course of their public duties, which occur within the circle of their own personal knowledge and observations as such, functionaries are public documents.

78. Section 77 of the erstwhile Indian Evidence Act provides for proof of public documents. This section reads as under;-

***“Section 77 of Indian Evidence Act-Proof of documents by
production of certified copies--Such certified copies may be***



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-34-

*produced in proof of the contents of the public documents or parts
of the public documents of which they purport to be copies.”*

79. Section 76 of BSA is corresponding to section 77 of erstwhile Indian Evidence Act, which reads as under;-

***“Section 76 of BSA-Proof of documents by production of
certified copies-Such certified copies may be produced in proof of
the contents of the public documents or parts of the public
documents of which they purport to be copies”.***

80. It is clear from the reading of aforesaid provision that where the custodian of the public document, which any person has right to inspect, has given a certified copy on demand, such certified copy may be produced as proof of the contents of public documents or its parts. Meaning thereby, a duly certified copy of ‘Rapat Roznamchas’ as maintained by the Patwari, is *per se* admissible in evidence in view of aforesaid provisions.

81. In these cases, the entries in *Rapat Roznamchas* No. 66, 67 and 69 vide Ex. DW3/1, DW3/2 and DW3/3 dated 22.10.1981 made by DW3 Niranjan Singh Patwari are duly proved in his own statement on oath. This Court in ***State of Punjab vs. Bakshish Singh, 2003 (2) Shim L.J. 1540*** observed that ;

“ it cannot be said by any stretch of imagination that the entry made in the Roznamcha of the Patwari is not genuine. There is no reason to disbelieve the Patwari also in this regard. The entry was made in the original Raznamcha by an official concerned in the course of performance of his official duties and is admissible under Section 35 of the Indian Evidence Act. The learned lower



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-35-

Appellate Court had entered into a detailed discussion in this regard and I have no reason to disagree with the same. Hence, it is hardly open to the State to call its records as of doubtful character.”

82. These *Rapat Roznamchas* No. 66, 67 and 69 vide Ex. DW3/1, DW3/2 and DW3/3 dated 22.10.1981 were recorded by DW3 Niranjan Singh Patwari in discharge of his official duties and a presumption of correctness is attached to the same under Section 114 of the Indian Evidence Act. The burden lies upon the person who asserts to the contrary to rebut the same by leading evidence. In ***Vishwa Vijai Bharti vs Fakhrul Hasan & Ors. (1976) 3 SCC 642***, Hon’ble Apex Court observed that the presumption of truth attached to revenue record can be rebutted if such entries were made fraudulently or surreptitiously. The presumption of truth attached to revenue record also stood rebutted if such entries have not been made by following the prescribed procedure.
83. During the course of arguments, learned counsel for the plaintiffs/appellants argued that Bhikha Chowkidar is not examined and Nihal Singh was not alive at that time, however, death certificate of Nihal Singh, was not produced in the Court and it is for the plaintiffs to rebut the entries of *Rapat Roznamchas* and were duty bound to examine Bhikha Chowkidar in the Court.
84. To rebut the contents of *Rapat Roznamchas* Ex. DW3/3 which reflects that over the part of the suit property, Dharam Singh along with Rimal Kaur was in possession, learned counsel for the plaintiffs has drawn attention of this Court



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-36-

towards judgment dated 26.08.1988 passed by Sub Judge, Ist Class, Rewari in civil suit No. 367 of 1981 instituted on 30.03.1981, Ex. PN (as exhibited in civil suit No.17 of 1987) filed by Rumal Kaur against Dharam Singh, Kishan Singh son of Sultan Singh for permanent injunction restraining them from interfering in her possession over the suit property which is also subject matter of the present appeals. The said suit had been decreed in favour of Rumal Kaur restraining the defendants from interfering the peaceful possession of the Rumal Kaur, plaintiff. Only Kishan Singh son of Sultan Singh filed appeal against judgment dated 26.08.1988 Ex. PN. Dharam Singh did not file appeal against the judgment dated 26.08.1988 Ex. PN and he was impleaded as proforma respondent (respondent No.5). During the pendency of appeal against judgment Ex. PN, Kishan Singh entered into compromise with legal heirs of Rumal Kaur and Kishan Singh suffered statement that out of the disputed property, *Khasra No.13/4 (5 kanal 10 marla)*, *5/1 (6 kanal 16 marla)* had been given to him and that he is in possession of *Khasra* numbers *10/1*, remaining disputed land i.e. *10/1, (8 kanal)*, *9/24 (3 kanal 16 marla)* and *9/25 (3 kanal)* be given to Krishana Bala; legal representative and daughter of Rumal Kaur and she is in possession of those *Khasra* numbers. Similarly Krishana Bala daughter of Rumal Kaur, also suffered statement regarding compromise and appeal was dismissed as compromised and decree was ordered to be prepared.

85. The findings of the learned trial Court in civil suit No. 367 of 1981 instituted on 30.03.1981 and decided on 26.8.1988 Ex. PN and compromise in appeal as reflected in order Ex. PL on 20.08.1991 of the Court of learned Additional District Judge, Rewari in civil appeal No.95 of 1988, cannot affect the rights of



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COC-P-885-2010 and CRM-M-32841-2010**

-37-

defendants because the findings in said suit No. 367 of 1981 are *in personam* and not in *rem*. Murti Thakurji or its Mahant Ghan Shyam Dass was not party to this civil suit and above numbered appeal and they never got the opportunity to contest the claim of the Rimal Kaur, plaintiff or her legal heirs. Judgment dated 26.8.1988 Ex. PN and order dated 20.08.1991 Ex.PL were rightly not considered by the learned trial Court and learned First Appellate Court to determine the possession of plaintiff or her legal heirs over suit property in civil suit No.17 of 1987.

86. Learned counsel for the plaintiffs has also drawn attention of this Court towards compromise effected on 24.01.1979, by Ghan Shyam Dass, defendant in civil suit No. 367 of 1981 instituted on 30.03.1981 mark A15 (as exhibited in civil suit No.17 of 1987). The recitals of this agreement/compromise dated 24.1.1979 reveals that Ghan Shyam Dass, defendant had filed a suit for ejectment against Rimal Kaur in the Court of SDO/Collector, Ist Class, Rewari and he accepts Rimal Kaur as tenant and agreed that Rimal Kaur shall remain in possession over the suit property and he shall not file any application for ejectment and shall get her name entered in the revenue record as tenant. It is undisputed that after 24.01.1979, no action was taken either by Rimal Kaur or Ghan Shyam Dass for correction of revenue record for entering the name of Rimal Kaur as tenant instead of tenant at will. This proved that agreement mark A15 was never acted upon or implemented. On the other hand, Rimal Kaur on her own will relinquished the possession of the suit property along with Dharam Singh, therefore, learned trial Court and learned First Appellate Court had rightly not considered agreement/compromise mark A15 deciding



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-38-

civil suit No.17 of 1987 and the appeal against the judgment of learned trial Court.

87. Learned counsel for the plaintiffs are also contended that no possession was delivered after getting thumb impression of Rimal Kaur on aforesaid *Rapat Roznamchas*. It is further submitted that Rimal Kaur remained in possession over this property subsequent to 22.10.1981 because Ghan Shyam Dass, defendant charged rent at the rate of an amount of Rs.800 per annum vide rent receipts Ex. PW-9/B and Ex. PW-9/E (as exhibited in civil suit No.1080 of 1985) /Ex. PX/2 and receipt Ex. PW3/5 and PW8/2 and that signatures of Ghan Shyam Dass, defendant on these receipts are duly proved on record by PW4 Som Nath Aggarwal, Handwriting and Finger Print Expert, examined in the Court as well as by PW11 Krishana Bala, PW9 Ram Swarup.
88. It is important to note that PW4 Som Nath Aggarwal, Handwriting and Finger Print Expert, PW9 Ram Swarup only stated about signing of these receipts by Ghan Shyam Dass, defendant but did not state anything about the contents of these receipts. PW2 Rohtash had reason to depose against the defendants because he had filed suit for recovery of money against Ghan Shyam Dass, defendant that has since been dismissed. PW10 Dalip Singh and his brother Jai Dayal also filed civil suit pertaining to 10 killas of land of temple/Murti Thakurji against Ghan Shyam Dass on the basis of agreement to sell. Although, PW11 Krishana Bala daughter of Rimal Kaur, in her statement before the Court stated that the receipts were scribed by her but this fact is not pleaded in the plaint. No other witness except Krishana Bala, deposed that contents of abovenoted receipts were scribed by her, whereas PW9 Ram



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-39-

Swarup expressed ignorance who scribed these receipts. Thus, had these receipts PW-9/B and PW-9/E been scribed by PW11 Krishana Bala and PW9 Ram Swarup would have been aware of the fact of when, where, and by whom these receipts were scribed as he is claiming to be attesting witness of these receipts. Had Receipt Ex. PW-9/E dated 07.07.1983 been scribed by PW11 Krishana Bala it would have been bearing her signatures as scribed. However, the signatures of its scribe are not appended on the receipt Ex. PW-9/B and Ex. PW-9/E and this falsifies the case of the plaintiffs that after taking payment of Rs.800/- per annum as rent, Ghan Shyam Dass, defendant, signed on these receipts Ex. PW-9/B dated 22.03.1982 and Ex. PW-9/E dated 07.07.1983. Simply exhibiting a document on record is not enough to discharge the onus of its execution. Similarity of signatures on the receipts also does not discharge the onus of proof of execution of these receipts Ex. PW-9/B and Ex. PW-9/E by Ghan Shyam Dass, defendant. Mere signing of the receipts do not amount to its due execution, execution requires signing with intent to accept and give effect to the contents of documents. A signature on blank paper cannot be treated as admission of execution of receipts. The plaintiffs were required to prove that Ghan Shyam Dass, defendant signed on receipts after these were written and completed and after fully understanding and admitting the contents of the same. None of the witnesses had proved the contents of these receipts. None of the witnesses stated that Ghan Shyam Dass, defendant signed on the receipts after admitting and understanding the contents of the same. The burden of proof of a document is on the party who wants to get relief in a suit. Ghan Shyam Dass, defendant specifically alleged in his written statement as



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-40-

well as testimony in civil suit No. 1080/1985 that his signatures were obtained under threat on blank paper when he was forcibly taken to village Bhind, where uncle of Rohtash (PW2) was posted as Jailor. PW9 Ram Swarup during cross examination admitted that Sanwat Singh is his brother and he was posted as a Jailor at village Bhind. Another fact admitted by him is that defendant had been going to village Bhind. Rohtash PW2 also stated that Ghan Shyam Dass, defendant remained untraceable in the year 1981-83. In such a situation it was imperative for the plaintiffs to prove the contents of the receipts which had not been done by them and the learned trial Court and learned First Appellate Court in both the civil suits and appeals rightly held that plaintiffs failed to prove payment of rent to Ghan Shyam Dass, defendant after *Kharif* 1981 when the plaintiffs relinquished possession over the suit property on 22.10.1981.

89. It is also case of the plaintiffs that Police complaint was filed regarding obtaining thumb impressions of Rimal Kaur fraudulently, however, no such Police complaint is brought on record. Rimal Kaur in the plaint pleaded that her thumb impressions were obtained in the entries of the *Rapat Roznamchas* Ex. DW3/1 to Ex.DW3/3. She has not specifically pleaded the pretext under which her thumb impressions were obtained i.e. whether any fact was misrepresented to her or it was by force or coercion. Rimal Kaur had not pleaded that she was ignorant, rustic, *pardanasheen* lady, unfamiliar with the ways of the world. Niranjana Lal Patwari DW3 during the cross examination stated that Rimal Kaur was about 55-60 years of age and he knows her. He categorically stated that she was in sound disposing mind. He is very specific that Nihal Singh was alive on 22.10.1981 and signed on *Rapat Roznamchas*



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-41-

No.66. Though illiterate, Rumal Kaur was not *pardanasheen* lady at the time when she thumb marking on *Rapat Roznamchas* No.66, 67 and 69. Rumal Kaur had filed a civil suit against Dharam Singh on 30.03.1981 i.e. before thumb marking entries of *Rapat Roznamchas* No. 66, 67 and 69 dated 22.10.1981. She nowhere pleaded that she did not understand the contents of *Rapat Roznamchas* when her thumb impressions were obtained. Therefore, learned trial Court rightly held that on 22.10.1981, Rumal Kaur had relinquished possession of suit property in favour of defendants. No suggestion was put to DW3 Niranjana Lal Patwari that he colluded with the defendants. DW3 Niranjana Lal Patwari had no reason to obtain the thumb impressions of Rumal Kaur on these *Rapat Roznamchas* in the Panchayat. By making entries in the *Rapat Roznamchas*, he acted in discharge of his official duties. Unless any specific motive is attributed to DW3 Niranjana Lal Patwari or proved on record, the entries cannot be disputed as presumption of truth is attached to these entries which the plaintiffs failed to rebut.

90. The plaintiffs alleged themselves to be occupancy tenants. The term “occupancy tenant” is defined in Section 2 (f) of the Act, 1952 which reads as under:-

Section 2: Definitions

xxx

(f) : ‘Occupancy Tena’ means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-42-

by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant.”

91. It is the case of the plaintiffs that initial tenancy was for a fixed term of 20 years which had been further extended vide different lease agreements. It is undisputed that in a revenue record i.e. in *jamabandis* and *Khasra Girdawaris*, the possession of plaintiff, Rimal Kaur and before her, that of her husband Jai Singh was tenant at will. Plaintiffs never approached revenue Court for changing the nature of their possession from tenant at will to occupancy tenant.
92. Under Section 9 of the Act, 1887, tenant cannot acquire right to occupancy by merely lapse of time. This section reads as under:-

“Section 9 of The Punjab Tenancy Act, 1887:-Right of occupancy not to be acquired by mere lapse of time.— No tenant shall acquire a right of occupancy by mere lapse of time.”

93. Moreover, in order to claim ownership being occupancy tenant, the criteria mentioned in Section 5 of the Act, 1887 and Section 3 of the Act, 1952, has to be fulfilled. These sections read as under:-

“ Section 5 of the Act, 1887 :-Tenants having right of occupancy - (1)

A tenant-

- (a) who at the commencement of this Act has for more than two generations in the male line of descent through a grandfather or grand-uncle and for a period of not less than twenty years, been occupying land paying no rent therefore beyond the amount of the*



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-43-

land- revenue thereof and the rates and cesses for the time being chargeable thereon, or

(b) xxx

(c) xxx

(d) xxx

has a right of occupancy in the land so occupied, unless, in the case of a tenant belonging to the class specified in the clause (c), the landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expense of, the founder.

(2) *If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefore beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (1).*

(3) *The words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir and relationship, by the usage of a religious community.”*

Section 3 of the Act, 1952- “Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords-
Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force on and from the appointed day-

(a) *all rights, title, and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the*



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-44-

land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

- (b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;*
- (c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of the land;*
- (d) the occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act."*

94. Under Section 35 of the Act, 1987 a tenant holding for a fixed term under a contract or decree or order of competent authority may relinquish his tenancy without notice at the end of that term. As discussed above, Rimal Kaur relinquished her tenancy by thumb marking on entries of *Rapat Roznamchas* Ex.PW3/1 to PW3/3 with her own volition, free consent, without pressure or coercion. At the time of filing of civil suits, Rimal Kaur was not in possession of suit property as she had already relinquished possession on 22.10.1981. Her



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-45-

possession as on 1981 was not for more than two generations in the main line of descents and the rent being paid by her and previous to that, by her husband was more than land revenue as the land had been taken on lease @ Rs.50/- per acre whereas, the land revenue was assessed @ Rs.9/- per acre. Therefore, the rent paid by the plaintiffs till *Kharif* 1981 was more than the land revenue. The learned trial Court and learned First Appellate Court, rightly appreciated that facts and evidence on record in its rightful perspective by holding that the plaintiffs could not be said to be tenants having right to occupancy and therefore, no proprietary rights vested in them and they were rightly not declared owner of suit property in any manner.

95. In civil suit No.17 of 1987, learned trial Court rendered findings that the suit is barred under Order II Rule 2 CPC because the plaintiff has not included the plea of ownership which was available to them in the year 1985 when they filed civil suit No.1080. Order II Rule 2 CPC reads as under:-

“ORDER II- Frame of suit

Rule 2: Suit to include the whole claim.—(1) xxx

(2) Relinquishment of part of claim. —Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) xxx

Explanation:- For the purpose of this rule an obligation and a collateral security for its performance and successive claims arising under the



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-46-

same obligation shall be deemed respectively to constitute but cause of action.”

96. The subject matter of civil suit No.1080/1985, was the land bearing Rect. No.6 killa No.23 (4-4), Rect. No.8 killa Nos. 21 (4-8), 22 (5-18), Rect. No.9 killa Nos. 3(4-17), 9(8-8), total area 27 kanal 7 marla, and the claim of the plaintiffs were for declaration that the change of cultivation in respect of the suit land in the name of defendant is illegal and invalid and that the plaintiff is still tenant with consequential relief of permanent injunction restraining defendant from interfering in her possession, whereas the subject matter of civil suit No.17 of 1987 is land measuring 103 *kanal 9 marla* which includes suit property of civil suit No.1080/1985 and civil suit No.17/1987 was filed for declaration that the plaintiff Rimal Kaur and her husband were in continuous cultivating possession of suit property and that she be declared as owner in possession with consequential relief of permanent injunction restraining the defendants from interfering in her possession. At the time of filing of civil suit No. 1080/1985, the plaintiff Rimal Kaur did not sue in respect of her claim over the property which is subject matter of civil suit No.17/1987, she is barred from suing regarding this property. The right to claim ownership by way of occupancy tenant over whole suit property was available to the plaintiff; Rimal Kaur at the time of filing of civil suit No.1080/1985 but it is not so claimed and the plaintiff Rimal Kaur and her successor-in-interest are barred from raising this issue by way of filing subsequent suit No.17 of 1987. The learned trial Court and learned First Appellate Court correctly held that subsequent civil suit No.17 is barred by principle of Order II Rule 2 CPC.



**RSA-2115-2006 (O&M), RSA-973-2010 (O&M),
COCP-885-2010 and CRM-M-32841-2010**

-47-

97. In view of the detailed discussion hereinabove, the findings of the learned trial Court and learned First Appellate Court in both the appeals are upheld. The learned Courts below rightly adjudicated against the appellants, on the basis of *Rapat Roznamchas* Ex.DW3/1 to Ex.DW3/3 that Rimal Kaur had relinquished her possession over suit property on 22.10.1981 and that she failed to prove that her thumb impressions were obtained by deceit, fraud, misrepresentation or by concealment of facts. The receipts Ex. PW-9/B and Ex. PW-9/E allegedly signed by Ghan Shyam Dass, defendant were rightly disbelieved by the learned trial Courts and learned First Appellate Court. This Court find the decision of learned Courts below in both the civil appeals is cogent, reasoned and based on correct appreciation of oral and documentary evidence on record and law in its rightful prospect. Therefore, the well reasoned judgments rendered by the learned Appellate Courts in both the appeals do not call for any interference.
98. In view of the above discussion herein, no merit is found in both the appeals the same are accordingly dismissed. Consequently, COCP No.885 of 2010 also dismissed sans any merit. Resultantly, CRM-M No.32841 of 2010 for quashing of FIR No.83 dated 08.05.2010, is allowed.
99. Pending applications, if any, also stand disposed of.

29.05.2026

Jyoti-M

(RAMESH KUMARI)
JUDGE

Whether speaking/reasoned:	Yes/No.
Whether reportable :	Yes/No