

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3961 of 2011 (O&M)

Date of Decision: 13.03.2015

Mangla Ram and others

..... Appellants

Versus

Om Parkash and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Parmod Parmar, Advocate,
for the appellants.

Mr. R.A. Sheoran, Advocate,
for R-1 & R-2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This is defendants second appeal arising from a suit for declaration and possession. The defendants set up right to corpus land as occupancy tenants. A finding of fact has been returned by the Lower Appellate Court in its order dated August 01, 2011, while reversing the trial Court judgment and decree, that the defendants-appellants were not tenant either of Central Government or of the plaintiffs-respondents. The learned Court *a quo* has held that there is no evidence that any rent was being paid or any produce was being shared to support tenancy rights. The defendants' predecessor-in-interest was one Chandra admittedly a *pattedar* under the Central Government who paid a sum of Rs.12/- per annum as *pattedar* to the Central Government for the land under lease. Chandra died in 1979. The appellants No.1 to 7 are their successors-in-interest. The only way that

defendants could have succeeded in dismissal of the suit was to prove that there were occupancy tenants but in this they remained unsuccessful. They had earlier approached the revenue court seeking declaration as occupancy tenants and it was on the basis of that successful order that the appellants sold the land to defendant No.9 by way of a registered sale deed dated September 29, 2003, being the land which was purchased by the plaintiffs at an auction conducted by the Central Government in 1979. However, the order of the type the revenue court passed was rendered unlawful in view of the Full Bench decision of this Court in **Shiv Charan vs. The Financial Commissioner**, (2004) 138 PLR 569 where the law was settled that the civil court alone would have the jurisdiction to determine disputes as envisaged in Section 77 (3) (d) of the Punjab Tenancy Act, 1887. It is well settled that mere possession does not vest any occupancy rights under the Tenancy laws as rightly noticed by the Court *a quo*. On the death of Chandra the appellants could at best be seen as trespassers in possession of the suit land without devolving rights as heirs and legal representatives of the decedent pattedar whose lease came to an end on his death.

The only argument raised by the learned counsel for the appellants is that they are protected as tenants in occupation and on the death of Chandra, they became statutory tenants. However, the view of the Lower Appellate Court is to the contrary where a positive finding has been recorded that the defendants failed to prove that they had paid rent or lease money. Therefore, defendants No.1 to 7 could not have sold the property to defendant No. 9 as they were not true owners nor could they transfer possession in absence of right, title or interest. In view of the finding of fact

duly recorded that the appellants are not tenants, no substantial question of law arises in this appeal, much less substantial, to warrant interference with the order of the Lower Appellate Court. The reliance placed by the appellants on **Ram Lal vs. Darshan Lal and others**, 2008(3) RCR (Civil) 427 is misplaced. The relationship between Chandra and the Central Government was one leasor and lessee and with the death of Chandra, the relationship between the Central Government and the pattedar came to an ended which is not capable of being revived except by Central Government grant, which is not the case. Since the respondents had failed to prove their possession, they could only gain possession through the present suit. The respondents have been rightly declared owners with right to possession of corpus property as auction purchasers of evacuee property from the Central Government. Defendant No. 9 could only step into the shoes of the defendants 1 to 7.

The appeal fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

13.03.2015

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