

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

RSA No. 1713 of 2013 (O&M)

Date of decision : 29.10.2015

Shakuntala and others

.. Appellants

versus

Preeti and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Surender Saini, Advocate, for the appellants.

Rajesh Bindal, J.

The plaintiffs are before this Court against concurrent findings of fact recorded by both the Courts below whereby the suit filed by their predecessor-in-interest for declaration and permanent injunction, was dismissed.

The claim made in the suit was that the plaintiffs had become owner in possession of the suit property having acquired occupancy rights under Sections 5 and 8 of the Punjab Tenancy Act, 1887 (for short, 'the Act'). In support of the plea that the predecessor-in-interest of the appellants-plaintiffs were in possession of the property for the last 60-70 years, jamabandis were produced on record claiming that they being in possession for more than 30 years as *gair marusi* without payment of any rent, they had acquired ownership right in the property. Both the Courts below did not find any merit in the contention raised, hence, dismissed the suit.

In terms of Section 5(2) of the Act, to acquire occupancy right, if a tenant proves that he has continuously occupied land for thirty years and paid no rent therefor 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 had fulfilled the conditions of clause (a) of sub-section (1) of Section 5 of the Act. In support of the plea, though number of jamabandis were produced on record, however, the learned Lower Appellate Court found that

there was nothing pointed to show the pedigree linked with the land. The old revenue record produced in Urdu was not translated and further the most important being that in the jamabandi for the year 1971, the plaintiffs had been shown as tenant in the property @ ₹ 10/- per acre per year. The relationship of landlord and tenant were admitted from the litigation between the parties whereby vide Ex. D2, dated 14.11.1986 eviction orders were passed by the Assistant Collector 1st Grade, Sonapat, against the plaintiffs, which were still in operation as it had not been set aside. Though it is claimed that there is some interim stay granted by the Appellate Court, however, that may not be of any help as the conditions laid down in Section 5(2) of the Act are not complied with as the appellants were tenants and the litigation between the parties was still pending.

For the reasons mentioned above, I do not find any error in the judgments and decrees of both the Courts below. No question of law much less a substantial question of law arises in the appeal. The same is accordingly dismissed.

29.10.2015
vs

(Rajesh Bindal)
Judge