

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

RSA-3069-2013 (O&M)

Date of decision: 28.9.2015

Geeta and others

...Plaintiffs/appellants

Versus

Hari Ram and others

...Defendants/Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Navneet Singh, Advocate for the appellant

SNEH PRASHAR, J.

The present appeal is directed against the judgment and decree dated 12.3.2013 passed by the learned Additional District Judge, Sonapat affirming the findings recorded by learned trial Court vide judgment and decree dated 14.2.2011 vide which, suit of the plaintiffs-appellant for declaration was dismissed.

The facts necessary for adjudication of the matter are that previously the suit land was owned and possessed by Deep Chand, father of the plaintiffs alongwith Mankori wife of Rati Ram, aunt of the plaintiffs. Mankori died 15 years prior to the death of Deep Chand, who died in the year 1974. After the death of Mankori, the suit land was mutated in the name of Deep Chand. Both were in cultivating possession since times immemorial on payment of land revenue only and the revenue entry was shown as 'Bashere Parta Bila Malkana'. Being so, they

were alleged to have become full fledged owners as per the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (for short 'the Act of 1953'). On the ground that after the death of Deep Chand and Mankori, the plaintiffs being the natural legal heirs are owners in possession of the suit land and therefore, the revenue entries are liable to be corrected and they are entitled to be shown as owners instead of tenants, the instant suit was filed. The suit land has been acquired by the State Government and the compensation is likely to be distributed only among the defendants-respondents, who are denying the title of the plaintiffs.

The suit was contested by defendants. In the written statement filed by defendants No. 5 and 6 which was adopted by defendants No.1 to 4 and 7 to 10, it was submitted that the plaintiffs were cultivating the suit land on Batai Tihai i.e. 1/3rd share in produce as rent. On the death of Mankori, they (defendants) being their legal heirs acquired the ownership rights qua the suit land. However, due to mistake on the part of the officials of the revenue department, the relevant entries have not been incorporated in the revenue record. Defendants No. 11 to 13 were proceeded against ex-parte.

On the pleadings of the parties, the following issues were framed by learned trial Court:-

1. Whether the plaintiff is entitled for a decree of declaration on the grounds mentioned in the plaint?

OPP

2. Whether the suit of the plaintiff is not maintainable in

the present form? OPD

3. Whether the plaintiff has no cause of action or locus standi to file the instant suit? OPD
4. Relief.

The plaintiffs-appellants adduced their documentary as well as oral evidence. However, the defendants did not lead any evidence and they were proceeded against ex-parte by learned trial Court.

Considering the evidence available on record, learned trial Court vide judgment and decree dated 14.2.2011 dismissed the suit of the plaintiffs-appellants finding that they had failed to fulfill the conditions necessary for becoming an occupancy tenant based on which, they were claiming ownership rights over the suit property.

Aggrieved of the judgment and decree passed by learned trial Court, plaintiffs-appellants preferred an appeal, which was also dismissed by learned District Judge vide judgment and decree dated 12.3.2013 affirming the findings of learned trial Court.

Feeling aggrieved, the plaintiffs-appellants preferred the present regular second appeal.

The submissions made by learned counsel for the appellants have been heard.

It is submitted on behalf of the appellants that they had been

in cultivating possession of the suit land since the time of their forefathers i.e. for the last about 60 to 70 years on payment of nominal rent i.e. only the land revenue rates and cesses. The entry in the column of rent in the revenue record is being recorded as Bashere Parta Bila Malkhana. Thus, the presumption contained in Section 5 and 8 of the Act 1953, ought to have been raised in favour of the appellant. Deep Chand father and Mankori aunt of the plaintiff were in possession of the suit land. Mankori died much before the death of Deep Chand and her share was also mutated in the name of Deep Chand. Krishna being only legal heir of Deep Chand and Mankori came in possession of the suit land on the death of Deep Chand. As per Jamabandi for the year 1936-37, Mankori has been shown to be in cultivating possession over the suit land at a nominal rent and the rent was never increased. Claiming to be a tenant for the last 30 years and having paid no rent beyond the amount of land revenue rates and cesses, she fulfilled all the conditions of being declared occupancy tenant and the appellants being the legal heirs of Krishna have become owners of the suit land and are entitled to total compensation awarded against acquisition of the land.

Section 5 (2) of Punjab Tenancy Act, 1887 (for short 'the Act of 1887') deals with right of occupancy of tenant and provides that if a tenant proves that he is continuously occupying the land for 30 years and paid no rent beyond the amount of land revenue, rates and cesses for the time being chargeable thereon, it has to be presumed that he has fulfilled the conditions of clause (a) of Sub Section 1 of the Act and has a right of occupancy in the land so occupied.

In the case in hand as observed by learned trial Court, the plaintiffs had not mentioned exact date or year since when they were in possession. Even if the plaintiffs and her ancestors are taken to be in possession since, the period claimed, they still had not met the requirements of Section 5(1) of the Act of 1887, as at the time of commencement of the Act i.e. 1.11.1987, they were not in possession of the suit land. As such, the plaintiffs could not be held to have any right of occupancy as envisaged under Section 5 of the Act. The appellants could also not produce any substantial evidence to prove that there was any agreement between their forefather and the respondents -owners not to ever eject them from the suit land.

Learned first Appellate Court discussing a catena of judgments and upholding the findings of learned trial Court held as under:-

“The appellants have claimed to be owners on the basis of long possession, intention not to eject and tenancy is on normal rate of rent. I have considered the contentions raised by the learned counsel for the appellants, carefully. The appellants have not given time, month and year of their possession. At the time of commencement of act i.e. 1st November, 1887, the land was not in possession of the ancestors of the appellants. In a case titled as Babu vs. Shib Nath 1934 Land Law Times, 25, it was laid down that occupancy rights under Section 8 of Punjab Tenancy Act can be

established by proof of promise, explicit or implied, never to eject. The intention not to eject has to be seen at the time of inception of tenancy. In Prabu Dayal vs. Yusuf Ali 1957 Punjab Law Journal 52, it was held that mere length of possession cannot entitle the tenant to the right of occupancy. The Jamabandies placed on record reveal that Deep Chand and Mankori have been shown to be tenant over the suit property as Gair Marusi. There is, however, no evidence on record to show that the owners had entered into an agreement with the ancestors of the appellants for not ejecting them from the suit property for all times to come. Similarly, nothing is mentioned with regard to increase or decrease of rent. In Zile Singh and others vs. Balbir Singh reported in 1991 Punjab Law Journal 58(P&H), it is held that if there is no evidence to show that there was an agreement between the tenant and the land owner to the effect that the tenant will not be ejected from the land, then, no presumption can be drawn that there was an implied agreement between the parties not to eject the tenant from the land. It is further held that in view of Section 9 of the Punjab Tenancy Act, no tenant can acquire a right of occupancy of mere lapse of time.”

In the light of above facts and findings, it cannot be said that

any illegality has been committed by learned Trial Court as well as First Appellate Court in passing the impugned judgments and decree. Finding recorded by learned trial court is fully justified by the evidence on record and is supported by cogent reasons. The said finding is not shown to be perverse or illegal nor it is based on misreading or mis-appreciation of the evidence, warranting intervention in the second appeal.

No question of law, much less substantial question of law, arises for determination in this second appeal. Accordingly, the appeal is dismissed in limine.

28.9.2015
gsv

(SNEH PRASHAR)
JUDGE