

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.1544 of 2014 (O & M)

Date of Decision: *December 15, 2015*

Rampal

..... APPELLANT

VERSUS

Om Parkash & others

..... RESPONDENTS

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Sanjay Vashisth, Advocate, for the appellant.

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Jaspal Singh, J

CM No.3667-C of 2014

For reasons given in the application, delay of 7 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.1544 of 2014 (O & M)

1. The instant appeal has been preferred by Rampal (one of the LR's of defendant – Surja), challenging judgment and decree dated July 28, 2011 passed by the trial court as well as judgment & decree dated August 31, 2013 passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and appeal filed by the defendant

(through LRs) against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for declaration with consequential relief of permanent injunction has been decreed.

2. While assailing the findings returned by the trial court on all the issues and affirmed by the lower appellate court, it has been ebulliently argued by learned counsel for the appellants that same are against the evidence available on file and settled canons of law. Mis-appreciation of evidence adduced by the plaintiff has resulted into mis-carriage of justice.

3. Learned counsel has contended that Johri (grand father of plaintiff) has never been a tenant in the suit property. There was no privity of contract between Johri and Kanha (father of original defendant – Surja). Defendants are owners in possession of the suit property and suit of the plaintiff deserves to be dismissed.

4. Learned counsel has further argued that since, Deena died issueless and unmarried, tenancy did not remain intact as per provisions of Section 8 of Punjab Security of Land Tenures Act, 1953 (for short, 'Act') and consequently, tenancy came to end on death of Deena. Therefore, the impugned judgments & decrees are liable to be set aside.

5. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant and has scrutinized the record.

6. As per the case of the plaintiff, his grand-father Johri was voluntarily settled over the suit land by Kanha (father of defendant) as tenant on payment of negligible amount as yearly chakota/ rent including revenue, however, tenancy was not created for any fixed period. Kanha had orally promised the predecessor(s) of plaintiff that he will never eject him or his

occupied by his son Deena (uncle of plaintiff) and Sarupa (father of plaintiff). Deena died issueless and unmarried. Subsequently, Sarupa also died, whereafter, plaintiff being the sole heir of Deena and Sarupa, occupied the suit land as per tenancy law and acquired the ownership rights over the same. To prove his case, plaintiff examined oral as well as documentary evidence. He placed on record various jamabandis for the years 2002-03 (Ex.P1), 1942-43 (Ex.P2), 1946-47 (Ex.P3), 1951-52 (Ex.P4), 1954-55 (Ex.P5), 1961-62 (Ex.P6), 1982-83 (Ex.P7), 1987-88 (Ex.P8), and 1997-98 (Ex.P9).

7. Undisputably, land measuring 3 kanal 18 marla out of Killa No.18 was acquired vide Notification No.1/16 dated April 11, 2007 for laying new railway line from Rewari to Rohtak. In Jamabandi for the year 1942-43 (Ex.P2), Kanha son of Natha is recorded as owner, whereas Deena & Sarupa have been recorded as Gair Morusian (tenants at will). In Jamabandi for the year 1946-47 (Ex.P3), name of Surja son of Kanha is recorded in the column of ownership and names of Deena & Sarupa are recorded in the column of cultivation as Gair Morusian and against column No.9, Chakota sal Tamam @ 4.30 is recorded. In Jamabandi for the year 1950-51 (Ex.P4/T, Hindi Translation), name of Surja is recorded in the column of ownership and name of plaintiff Om Parkash son of Sarupa is recorded in the column of cultivation as Gair Morusi. To the similar effect are the entries recorded in jamabandis for the years 1954-55, 1961-62, 1982-83 and 1997-98. Therefore, it is established that prior to commencement of Punjab Occupancy Tenancy Act, 1952 i.e. June 15, 1952, Johri, grandfather of plaintiff; after death of Johri, his Sarupra (father of plaintiff); and after death of Sarupra, plaintiff became in possession of the suit land as Gair

also produced on file copy of Jamabandi for the year 1946-47 (Ex.D1/T) wherein Surja is recorded as owner, whereas Deena & Sarupra are recorded as Gair Morusi in column No.9 Batai Tihai (1/3rd share of produce). However, no other document/jamabandi prior or after the year 1946-47 could be produced on record to prove that Deena and Sarupa were in possession on Batai Tihai.

8. In case Bahadur Singh & others vs. Shangara Singh & others, 1995 PLJ 256 (SC), tenant came into possession of land before June 15, 1952 i.e. the date of enforcement of The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 and it has been held by the Hon'ble Supreme Court that pre-existing jural relationship of landlord and tenant put to an end by operation of law. It has been held that contract under which tenant came into possession and covenants contained therein no longer subsist and operate between erstwhile landlord and tenant after appointed dated June 15, 1952. Name of tenant was not recorded as occupancy tenant and tenant continued to pay rent. Accrued right in favour of tenant by operation of law does not get defeated by omission to have name recorded in revenue record as occupancy tenant. Payment of rent by tenant does not divest tenant of right acquired under statute and tenant became absolute owner of land on June 15, 1952. Similarly, in case Jodh Singh & another vs. Smt. Shanti Bai, 2009(1) RCR 2008 (P & H), it has been held by this Court that a person occupying the land as occupancy tenant would become absolute owner under Section 3 of the Occupancy Tenant Act, 1952. A perpetual tenant of land will also come within the term occupancy tenant and would also become owner of land under the Occupancy Tenant Act. It has further been held that occupancy right stood extinguished on April 15, 1953

into force on June 15, 1952 and every tenant claiming occupancy rights, automatically became owner of the land by operation of law.

9. In the case in hand, Johri was in possession of the suit land as Gair Morusi. After the death of Johri, his sons Deena and Sarupra came into possession. Deena died issueless and unmarried. Subsequently, Sarupra also died. After his death, plaintiff being the sole heir of Deena and Sarupra occupied the suit land as per tenancy law. The tenancy was jointly acquired by Deena and Sarupra after the death of their father Johri and after their death, it has been acquired by plaintiff who is their male descendant. Thus, the courts below have rightly declared the plaintiff to be owner in possession of suit property by virtue of Section 3 of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act and the defendants have been rightly restrained from alienating the suit property or from creating any charge over the same or claiming compensation of the suit land.

10. In the light of what has been discussed above, there is no infirmity, illegality and impropriety in the findings returned by the courts below. Consequently, impugned judgments & decrees passed by both the courts are upheld. Accordingly, the appeal is dismissed. However, the parties are left to bear their own costs.

December 15, 2015
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(Jaspal Singh)
Judge