

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4802 of 2011 (O&M)

Date of Decision: 29.01.2016

Ram Chander and Others

... Appellant(s)

Versus

Jai Narayan and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. N.C.Kinra, Advocate
for the appellants.

Mr. Ashwani Bakshi, Advocate
for respondent No.8.

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of both the Courts below, whereby suit of the plaintiffs for permanent injunction was dismissed and first appeal, filed by the present plaintiffs/appellants, was also dismissed.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance. Relevant facts for the purpose of decision of the present appeal that as per plaintiffs, Dhani Ram was the owner of the suit land. Dhani Ram died more than 40 years back and before his death he had given suit land to Luxmi

Narain alias Lichmi Narain, who also died more than 35 years back. Present plaintiffs are legal heirs of Luxmi Narain. Dhan Pal, son of Luxmi Narain died and he was unmarried. Dhani Ram, original owner, had given land for cultivation to Luxmi Narain without payment of any rent. Dhan Pal, son of Luxmi Narain, had executed a Will on 6.9.1996 in favour of Ram Chander. The other plaintiffs relinquished their share in favour of Ram Chander in a family settlement. Plaintiff Ram Chander became owner of 1/4th share. Sons of Dhani Ram and his daughter-in-law Smt. Nanhi died and the defendants are their legal heirs.

As per defendants No.1 to 7, the suit land was given on batai by Dhani Ram and after his death by his legal heirs and the plaintiffs are not entitled to injunction as they are not owner of the suit property. Defendant No.8 took the plea that he is a bonafide purchaser of the suit land.

On these facts, Court of first instance settled issues and both the parties led their respective evidence. The Court of first instance, after appreciating the evidence, returned the findings that plaintiffs failed to prove that they are the owner in possession of the suit land and they are not entitled to relief as prayed for. First appeal filed before the Appellate Court was also dismissed and as such, the present appeal before this Court.

Learned counsel for the appellants submitted that the real controversy involved in the case is whether plaintiffs are occupancy tenants or not. However, the Court below returned the finding while coming to the conclusion that Civil Court has got no jurisdiction to try

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and decide such a controversy whether anybody is a occupancy tenant or not. The Court below placed reliance upon judgment of this Court which has already been over-ruled by judgment rendered by Hon'ble Full Bench of this Court in case ***Shiv Charan v. The Financial Commissioner, Revenue Department, Haryana and Others*** **2004(3) PLR 571.**

Learned counsel for the appellants submitted that the appellants have been shown to be in possession of the suit land and they are still in possession thereof. Respondents No.1 to 7 never stepped into the witness box. However, the Courts below have not appreciated the correct facts. Although possession of the appellants is in the capacity of *gair marusi* and duly recorded in the revenue record and as such, findings recorded by both the Courts below are liable to be reversed.

While arguing on these points, learned counsel for the respondent submitted that both the Courts below have already appreciated the entire evidence available on file. Civil suit filed by the plaintiffs and appeal have not been dismissed merely on the point of jurisdiction but otherwise also plaintiffs failed to prove that they have got no right, title or interest in the suit property. Learned counsel for the respondent further submitted that in earlier round of litigation, appellants took the plea that they are owner of the property on the basis of adverse possession and by way of present litigation, they are taking quite contradictory plea that they are the occupancy tenants. Both these pleas are contradictory and the same cannot be taken

because occupancy tenants have permissive possession, whereas ownership rights on the basis of adverse possession are based on long established possession which is hostile to the knowledge of true owner. Ex.D4 is the copy of plaint of earlier suit whereby plea of adverse possession was taken by the appellants. Subsequently, vide Ex.P18, suit of the appellants on the basis of plea of adverse possession was dismissed as withdrawn.

Learned counsel for the respondent also argued that as per revenue record, status of appellant is just a *gair marusi* and not occupancy tenants because in the alleged record, it was recorded as "*Billa Lagan Bewaja Baradar-e-haqui*". However, if any tenant is not paying the rent, he is not a tenant because tenant must pay rent. Present appellants are not covered under the definition of "occupancy tenants" as per provisions of Section 5 of the Punjab Tenancy Act, 1887 (hereinafter referred to as "the Act"). Appellants are not covered under the definition of "occupancy tenants" and the findings to this effect have already been recorded by the Court of first instance and duly affirmed by the First Appellate Court. However, defendants No.1 to 7 colluded with the plaintiffs and chosen to be proceeded against *ex parte*. Only defendant No.8 is the contesting defendant because bonafide purchaser can take all such pleas.

Learned counsel for the respondent submitted that findings of fact recorded by both the Courts below do not call for interference. There is no substantial question of law involved in this case and appeal be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, this Court is of the considered view that present regular second appeal is not maintainable because no substantial question of law is involved in this case and the facts have already been appreciated by both the Courts below.

This Court say so because of the reason that plaintiffs had filed suit for permanent injunction on the ground that they are owner in possession of the suit property. Plaintiffs asserted their claim on the basis that original owner Dhani Ram had given the land in dispute to Luxmi Narain during his life time. The said land was given for cultivation without any payment of rent and with the compromise that he would never be evicted and the same was the custom in the country. Plaintiffs are cultivating the suit land as owner in possession of the same without payment of any rent.

As regard to the jurisdiction of Civil Court to decide controversy with regard to status of plaintiffs as occupancy tenants or not, the same is settled as per view taken by Full Bench of this Court in ***Shiv Charan's case*** (*supra*). However, the controversy in this case has been decided by the Civil Court on all the other material evidence and pleas taken by the parties. Both the Courts below have recorded findings of fact that the plaintiffs had not been able to prove that they are covered under the definition of "occupancy tenants". The Courts below recorded findings that as per provisions of Section 5 of the Act, the tenant, who at the commencement of the 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 land-revenue thereof and the rates and cesses for the time being chargeable thereon, has a right of occupancy in the land.

In the case in hand, plaintiffs have not been able to produce any evidence on record in order to prove that they, being predecessor in interest, had been occupying suit property for a period of 20 years or more in the year 1987 i.e. at the time of commencement of the Punjab Tenancy Act.

As regard to status of plaintiffs as "occupancy tenants", they are not covered under the definition of Section 2 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953. It states that "occupancy tenant" 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 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. The Courts below recorded findings of facts that plaintiffs or their predecessor in interest were never shown to be recorded as "occupancy tenants" in the revenue record. More so, plaintiffs have not given any date from which they are in possession of the suit land. Findings of facts are clear that status of plaintiffs was as "tenants at Will" and not as "occupancy

tenants”.

As per view taken by Co-ordinate Bench of this Court, a *Gair Marusi (tenant)* cannot acquire the status and right of *Marusi* (occupancy tenant). The Co-ordinate Bench of this Court took this view in ***Jaleb Khan and Others v. Commissioner, Gurgaon Division, Gurgaon and Others 2009(4) RCR (Civil) 385***. As per Section 4(5) of the Punjab Tenancy Act, any person, being in unauthorized possession, can be described as *Gair Marusi (tenant)* and his status cannot be equated with the person of having status of tenant unless in the rent column, it is disclosed that such person is liable to pay rent.

Plaintiffs had taken different pleas which are quite contrary to the pleas taken by them in the present litigation because in earlier round of litigation, they claimed rights of ownership on the basis of adverse possession and by way of present litigation, they are claiming themselves as occupancy tenants, which is result of permissive possession. A person cannot claim himself to be in adverse possession of the land as tenant and can also not seek permissive possession of the same on the other hand being a tenant. Concurrent findings of facts recorded by both the Courts below do not call for any interference by way of present appeal. There is absolutely no substantial question of law involved in this case and as such present appeal stands dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

January 29, 2016

“DK”