

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

R.S.A.No.2751 of 2012 (O&M)

Date of Decision: April 06, 2016

Smt.Kela Devi & others

...Appellants

Versus

Dharampal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.R.A.Sheoran, Advocate,
for the appellants.**

**Mr.Mani Ram Verma, Advocate,
for respondent Nos.1 & 2.**

AMIT RAWAL, J. (Oral)

The appellant-plaintiffs are aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the claim qua the declaration that the plaintiffs and proforma defendant had acquired the occupancy rights under Sections 5 and 8 of the Punjab Tenancy Act, 1887 (for short "1887 Act") in respect of the suit property described in the plaint and that they are in cultivating possession of the land on nominal rent for more than 30 years with a consequential relief to issue direction to the respondents to correct the entries in the revenue record, has been dismissed by the Lower Appellate Court, in essence the judgment and decree of the trial Court decreeing the suit, has been reversed.

Mr.R.A.Sheoran, learned counsel appearing on behalf of the

appellant-plaintiffs submits that prior to the institution of the suit, the

plaintiffs had filed Civil Suit No.77 of 2002, in which the following decree was passed:-

“ This suit is coming on 24th May, 2005 for final disposal before me (Sh.Mahender Singh Addl.Civil Judge (Sr.Divn.), Loharu in the presence of Sh.D.P.Panwar, Advocate for the plaintiffs and Defendants exparte.

It is ordered that the suit of the plaintiffs succeeds and is decreed exparte with costs for declaration to the effect that the plaintiffs no.1 to 3 and 6 are owners in possession in equal shares of 4/5 share of the suit land and the plaintiffs no.4 and 5 along with proforma defendant are in possession in equal shares of the suit land to the extent of 1/5 share as gair-maurusi tenants, being successors-in-interet of Udmi son of Harchand, whereas the revenue entries showing defendants no.1 to 3 in possession of the same by virtue of rapat nos.101, 110 and 226 are illegal, null & void and are liable to be corrected in favour of the plaintiffs accordingly. The defendants are restrained from interfering in their peaceful possession over the suit land.”

The memo of parties in the aforementioned suit was as under:-

“1. Manohar, aged 46 years, 2.Dharambir, aged 35 years sons of Udmi son of Sh.Harchand, 3.Antar Singh, aged 30 years son of Udmi (deceased through his legal representatives (A) Smt.Mewa widow and (B) Jodha Ram minor son of Sh.Antar Singh son of Sh.Udmi son of Harchand, minor through Smt.Mewa, mother herself, 4.Ramniwas, aged 18 years, 5.Surender, aged 13 years sons of Sh.Sant Lal son of Sh.Udmi, minor through his guardian and next friend Ramniwas, his real brother, residents of village Behal, Tehsil Loharu, District Bhiwani, 6.Sindhokhi, aged 68 years widow of Udmi son of Harchand, resident of Behal, Tehsil Loharu, District Bhiwani.

...Plaintiffs

Versus

1. Banbir son of Sh.Lalchand son of Sh.Hemraj, 2.Dayanand

*son of Sh.Chandgi Ram, 3.Ishwar Singh son of Sh.To-kh Ram,
residents of village Behal, Tehsil Loharu, District Bhiwani.*

...Contesting defendants.”

Since the respondents and revenue department were not effecting the entries as per the judgment and decree and the fact that the entry had been corrected and it has been held to be an agricultural land, cause of action accrued to seek ownership on the basis of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (for short “1952 Act”). The trial Court, on the basis of the oral and documentary evidence, decreed the suit holding the nature of the property being agricultural and not gair-mumkin, whereas the Lower Appellate Court has erroneously held that as per the revenue record, i.e., jamabandies Ex.P4, Ex.P5 and Ex.P6, the land has not been mentioned as gair-mumkin but it has been mentioned as Tibba and that could not clothe the status of the land as agricultural and denied the relief of ownership on the basis of the occupancy tenants. He further submits that filing of the instant suit would not be hit by the provisions of Order 2 Rule 2 CPC and, thus, urges this Court to formulate the following questions of law:-

- 1) Whether the judgment and decree rendered by the Lower Appellate Court suffers from illegality and perversity by misreading the documentary evidence on record?
- 2) Whether the suit would be hit by the doctrine akin of res judicata, much less the provisions of Order 2 Rule 2 CPC?
- 3) Whether the nature of the land is agricultural or gair-mumkin?

Mr.Mani Ram Verma, learned counsel appearing on behalf of respondent-defendant Nos.1 and 2 submits that the relief, which has been sought in the instant suit, could not have been claimed in the previous suit

and, therefore, the appellant-plaintiffs omitted to claim the relief and, thus, the suit is hit by the provisions of Order 2 Rule 2 CPC. Even otherwise, the previous decree only grants them injunction against the respondent-defendants qua the possession and has not accorded any right of ownership and they were only held to be gair-marusi. The Lower Appellate Court has rightly appreciated the oral and documentary evidence, much less jamabandies, Ex.P4, Ex.P5 and Ex.P6 for the years 1980-81, 1985-86 and 1990-91. Tibba would not be treated as agricultural and, therefore, the same has to be gair-mumkin and in respect of the nature of the land as gair-mumkin, the plaintiffs did not have any subsisting cause of action to claim the ownership on the basis of 1952 Act and, thus, prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

The decree, as extracted above, grants the appellant-plaintiffs the status of ownership in possession of a particular area as gair-marusi and also the injunction restraining the defendants not to interfere in the possession, whereas in the instant suit, the plaintiffs claimed the following relief:-

“Suit for declaration to the effect that the plaintiffs and proforma defendant had acquired the occupancy rights under Section 5 and 8 of Punjab Tenancy Act, 1887 in Khewat No.48, Khatoni No.204 to 206 Khasra No.973/2min (8-2), 973/2min (1-0), 973/2min (7-19) total 17 Kanals 1 Marla as per jamabandi for the year 2000-2001 situated in Village Behal, Sub Tehsil Behal, Tehsil Loharu, District Bhiwani because the plaintiffs and proforma defendants are cultivating the suit land on nominal rent since last more than 30 years and on the basis of above said, the plaintiffs and proforma defendant had

become owners of the above said land under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, in which the plaintiffs No.1 and 2 are having 2/5th share in equal, plaintiff no.3 is having 1/5th share and plaintiffs no.4 to 5 and proforma defendant no.29 are having 1/5th share in equal, plaintiff no.6 is having 1/5th share and the revenue entries in jamabandi and khasra girdawari regarding the above said land in which the plaintiffs and proforma defendant had been recorded as gair marusi which is wrong, against law and facts and liable to be set-aside and not binding on rights of the plaintiffs and proforma defendants and the plaintiffs and proforma defendant are entitled for correction of the above said and the defendants have no right or concern with the suit land, on the basis of oral as well as documentary evidence.”

I am of the view that nothing prevented the appellant-plaintiffs to claim instant relief in the previously instituted suit and, therefore, now the suit is hit by the provisions of Order 2 Rule 2 CPC.

There is another aspect of the matter. The decree grants the appellant-plaintiffs the status of ownership and possession of the respective shares as gair-marusi. The simple and plain reading of the aforementioned decree accords them the status of occupancy tenants and, therefore, it was a total farcical and vague exercise in knocking the door of the Court by filing the suit as to whether the nature of the land is gair-marusi or not and claiming the occupancy tenants. In my view, the suit was not maintainable in view of the judgment and decree Ex.P11 held in favour of the appellant-plaintiffs.

Keeping in view the aforementioned facts and circumstances, once the appellant-plaintiffs have already been held to be in ownership and possession of respective share as gair-marusi, there was no need of filing the present suit, much less the claim in the suit is hit by doctrine akin to Order 2

Rule 2 CPC.

Accordingly, the judgment and decree of the Lower Appellate Court holding the property not to be agricultural are not sustainable. The same are accordingly set-aside. Rest of the findings are affirmed, in essence the suit is held not to be maintainable as per Order 2 Rule 2 CPC because there is already a finding in the previously instituted suit. Accordingly, substantial question Nos.1 and 2 are answered against the appellant-plaintiffs and in favour of the respondent-defendants. However, question No.3 is answered in favour of the appellant-plaintiffs and against the respondent-defendants.

The appeal stands disposed of in of the aforementioned terms.

April 6th, 2016
ramesh

(AMIT RAWAL)
JUDGE