

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

RSA No.3003 of 2012 (O&M)

Date of decision : 18.05.2016

Murti Devi and others

...Appellants

Versus

Ram Phal and others

(deceased through LRs)

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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. Anil Rathee, Advocate for the appellants.

AMIT RAWAL, J. (Oral)

CM No.8036-C of 2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 314 days in filing the appeal is condoned.

Application is allowed.

Main Case

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby suit claiming declaration of having become owner on acquiring occupancy right under Section 8 of the Punjab Tenancy Act, 1887 in the suit land measuring 4 kanals 0 marlas comprised in Khewat No.79 min Khata No.90 rect and Killa No.12/17/2(4-0 Bhur) total measuring 4 kanals-0

marla situated within the estate of Bajindpur Saboli Tehsil and District Sonapat for more than hundred years through their predecessors as tenant “Bashehrah Malkan Bila Malkan” under the defendants and their predecessors-in-interest vide jamabandi for the year 2000-2001 and consequently having become full fledged owners of the land in suit be passed in favour of the plaintiffs and against the defendants on the grounds fully detailed in the plaint, has been dismissed by both the Courts below.

Mr. Anil Rathee, learned counsel appearing on behalf of appellant-plaintiff submits that trial Court, much less, lower Appellate Court abdicated in not referring to the provision of Sub-Section 2 of Section 5 of the Punjab Tenancy Act, 1887 as applicable to the Haryana which envisages that in case tenant is in continuous occupation of the land for about 30 years and not paid rent beyond the amount of the land revenue thereof presumption shall be drawn having fulfilled the conditions of clause (a) of sub-Section (1) as the father and grandfather had been in possession beyond 30 years and thus urges this Court for formulation of the following substantial questions of law:-

1. Whether as per Section 5(2) of the Punjab Tenancy Act, 1887, the appellants being in possession of the land for the last more than 100 years are entitled to be declared owner being occupant tenant?
2. Whether on account of having possession over the land in question without payment of any rent without land revenue for more than 30 years, the appellants-plaintiffs would become occupancy tenant under Section 8 of the Act?
3. Whether as per provision of Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act 1953, the appellants become full-

fledged owners of the land in question?

This Court in order dated 17.10.2014 and 09.03.2015, noticed that the respondents-defendants have been served but there is no representation. Accordingly, I proceed to decide the appeal.

I am in agreement with the submission of Mr. Rathee, as the appellant-plaintiff have been deprived of the right of consideration with regard to the applicability of the provision particularly by the lower Appellate Court being the last Court of facts and law. For the sake of brevity, provision of Section 5 of the aforementioned Act, reads thus:-

“5. Tenants having right of occupancy.- (1) A tenant:-

(a) Who at the commencement of this Act has, for more than two generations in the male line of descent through a grand-father 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, or

(b) Who having owned land and having ceased to be landowner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has since he ceased to be landowner continuously occupied the land, or

(c) Who, in a village or estate in which he settled along with, or was settled by, the founder thereof as a cultivator therein, occupied land on the twenty first day of October, 1868, and has continuously occupied the land since that date or

(d) Who being jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or having been such jagirdar, occupied the land

while he was jagirdar and has continuously occupied it for not less than twenty years has a right of occupancy in the land so occupied, unless, in the case of a tenant belonging to the class specified in clause (c) the landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expenses of the founder.

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent thereof 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 has fulfilled the conditions of Clause (a) of Sub-section (1).

(3) The words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of any heir and relationship by the usage of a religious community."

I am of the view that once the appellant-plaintiff has been able to place on record certain material evidence to comply with the provision of Sub-Section 2 of Section 5, the Courts below were required to adjudicate upon the controversy raised in the suit, in essence, Court was required to co-jointly read the provision of law and thereafter formed an opinion. In the absence of it, I am of the view that appellant has been prevented from addressing his grievance.

Accordingly, impugned judgment and decree of the lower Appellate Court is set aside.

Matter is remitted back to the lower Appellate Court being the last Court of facts and law and consider the aforementioned provision of the Act and law along with documentary evidence and form an opinion for proper and factual adjudication of the lis.

The appellant-plaintiff is directed to appear before the concerned Court. Lower Appellate Court shall also issue notice to the respondent-defendants and after effecting the service shall decide the appeal as expeditiously as possible within a period of six months from the date of receipt of certified copy of the order.

Appeal stands disposed of.

18.05.2016

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(AMIT RAWAL)
JUDGE