

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

**RSA No.5101 of 2012 (O&M)
Date of decision:20.09.2016**

Hanif and others

... Appellants

Vs.

Rafiq and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V.K.Jindal, Senior Advocate with
Mr. Amardeep Sheoran, Advocate
for the appellants.

Mr. Amit Jain, Advocate
for the respondents.

AMIT RAWAL J.

Appellant-defendants are aggrieved of the judgment and decree rendered by trial Court, whereby, the suit for possession has been decreed and respondent-plaintiffs have been held entitled to recover the possession of suit land, i.e., the appellant-defendants were directed to hand over the possession of the same to the plaintiffs and the appeal filed against thereto, has been dismissed.

Mr. V.K.Jindal, learned Senior Counsel assisted by Mr. Amardeep Sheoran, Advocate appearing on behalf of the appellants submits that the respondent-plaintiff claimed that he acquired occupancy rights in the suit land by mutation no.3990 sanctioned on 29.10.1965 and therefore, he had become owner of the suit land as mentioned in para no.1 of the plaint and after acquiring the occupancy rights, the suit land was given to Chuttan son of Bhola son of Medi who was real brother of plaintiff

father due to close relation being brother for cultivation, much less, the possession was permissive. After his death Shadi son of Chuttan was also in permissive possession of the suit land and after his death, the present defendants were cultivating the suit land in the same capacity.

He further submits that respondent-plaintiff, Sahab Khan (since deceased), now represented through successor-in-interest, filed the suit on the ground that previously Sehmlat Patti Balot was owner of the suit land bearing Rect.No.130 Killa No.10/1(2-2), 1(4-8), situated within the revenue estate of village Bichore, Tehsil Punhana, District Mewat and the plaintiff's father Battu son of Bhola son of Medi was in cultivating possession of the suit land as Gair Mourisi Basharah Malkan Ba Wajah Kast Darin, i.e., only on payment of land revenue and one Kayyam son of Sheo Singh was sub-tenant on 130/10/1(2-2) on payment of Batai Nisfi under the plaintiff's father and one Mula son of Itbari as sub-tenant on Rect. No.130/1(4-8) which is reflected in the jamabandi for the year 1963-64.

He further submits that earlier the respondent-plaintiff had instituted a petition in form K-1 under Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as "1953 Act") branding the appellant-defendants as tenants but the same was dismissed, therefore, the present suit, as per the provisions of Order 2 Rule 2 of Code of Civil Procedure, was not maintainable. All the jamabandis from the year 1968-69 onwards have been showing the possession of the appellant-defendants, in essence, the possession had been more than 30 years on payment of **"land revenue and cesses"** and at the time of inception of tenancy, predecessors-in-interest of plaintiff promised not to eject the predecessors-in-interest of defendants or

the defendants from the possession of the land in dispute and also not to increase the rate of rent. The tenants, like defendants, have already acquired the rights of ownership over the land under their tenancy on such rate of rent and terms by acquiring the occupancy rights of ownership by operation of law under the provisions of Sections 5 and 8 of Punjab Tenancy Act, 1887 (hereinafter referred to as “1887 Act”) and therefore, after acquiring the ownership rights over the land in dispute, the relationship of landlord and tenant between the plaintiff and defendants ceased to exist. The possession of the defendants over the suit land had been regular, continuous and without interruption, i.e., since more than 30 years and the defendants have possessed the suit land in the hostile manner, in essence, plea of adverse possession was also taken. The revenue authorities in the earlier litigation did not hold the possession of the suit land being permissive. The Courts below have committed grave illegality and perversity in not considering the the aforementioned true facts and thus, urges this Court that judgments are liable to be set aside. The status of the appellant-defendants cannot be converted from tenants to permissive.

In support of his aforementioned contentions, he relied upon a judgment of this Court rendered in **Gordhan vs. Narain Dass etc. 1988 PLJ 604**, particularly paragraph 13, to contend that in case the rent consists of land revenue and cesses and when oral and documentary evidence has come on record and there is no rebuttal evidence to that effect, then a person who is in occupation of land as tenant-at-will would acquire the occupancy rights under the provisions of 1887 Act and thus, urges this Court for formulation of the substantial questions of law as culled out in the

memorandum of appeal.

Per contra, Mr.Amit Jain, learned counsel appearing on behalf of the respondents submits that there is a categroic pleading in paragraph 2 of the plaint that predecessors-in-interest of the defendants were inducted into permissive possession. There is no averment that possession or the permission was of tenancy. Even in the written statement, the appellant-defendants only admitted the payment of land revenue and cesses and not of “Rent”. All the jamabandies show the ownership in favour of the predecessors-in-interest of the plaintiff and as well as of the defendants. In the absence of any payment of rent, the appellants cannot acquire the status of tenants-at-will, much less, ownership under the provisions of Sections 5 and 8 of 1887 Act. In fact, the plea is not sustainable in the absence of any declaration or counter claim. He further submits that the Lower Appellate Court, being the last Court of facts and law, examined threadbare the provisions of 1953 Act and Rules framed thereunder and drawn the attention of this Court to the aforementioned provisions extracted therein which read thus:-

“2(9) “Self Cultivation” - means cultivation by a land owner either personally or through his wife or children or through such of his relations as may be prescribed or under his supervision.”

Rule 5- Relatives through whom self cultivation may be carried out. In addition to his wife and children, a landowner may undertake the self cultivation of his land through the relatives mentioned below:-

- i) *Brothers;*
 - ii) *Collaterals in the first degree*
 - iii) *Real uncle and nephews, whether maternal or paternal.*
- Provided that land is held by an unmarried female, her own relatives and after marriage, her husband's relative (also) shall be considered eligible.”*

He further submits that as per the provisions of Rule 21, a person holding possession on behalf of his brother will not be tenant rather the land will be treated in his possession as self cultivation of the land owner. He also submits that the concurrent findings of facts cannot be interfered until and unless, there is gross illegality and perversity. The ratio decidendi culled out in the judgment relied upon by learned Senior Counsel for the appellants in Gordhan's case (supra) does not apply to the facts and circumstances of the present case.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jindal, for, there is no written agreement of tenancy between the parties. On perusal of the statement of DW1- Aamin, it has been proved on record that Batto had ever inducted Chuttan as tenant over the suit land. The appellant-defendants have not challenged the mutation bearing No.3990 (Ex.P13) conferring the ownership rights upon the respondent-plaintiff which was done as per the order dated 19.05.1957 of SDM. The relationship between the parties is not in dispute. As per the entry in the jamabandi Ex.P4, for the year 1968-69, Battoo was recorded as owner and in the cultivation column no.5, Chuttan

son of Bhola was recorded as Gair Marusi.

On conjoint reading of columns no.5 and 9 of the jamabandi, it is irresistibly concluded that Chuttan was branded as "*Jummi Gair Marushi Bila Lagan Basarah Malkan*". It has nowhere been reflected in the jamabandi that appellant-defendants have been paying the rent, therefore, they cannot attain the status of tenants and seek the protection of the provisions of Sections 5 and 8 of 1887 Act, as noticed above.

In the absence of the relief of declaration of having acquired the ownership, in view of the provisions of Sections 5 and 8 of 1887 Act, the defendants have not set counter claim or filed independent suit, thus, plea of declaration has to be negated. After the ejectment order, the status of tenants becomes of trespasser and rightly so, the plaintiffs filed the suit for possession.

There is also no force in the submission of Mr. Jindal that the suit would not be maintainable in the absence of challenge to the entries, right from the year 1968 as the entries do not attain them the status of tenants. In fact, in my view, no cause of action accrued for challenging the same. In view of the aforementioned facts, even the ratio decidendi culled out by this Court in Gordhan's case (supra) does not apply to the facts and circumstances of the present case.

The Rules, extracted above, leave no manner of doubt that brother can hold the property on account of a person, who has acquired the ownership and his status would not be of a tenant. In my view, the defendants have miserably failed to prove the status of tenants and to wriggle out of the provisions of Section 9 of Code of Civil Procedure,

whereby, the jurisdiction of the Civil Court had been invoked seeking possession of the property. Had there been any relationship of landlord and tenant between the parties, nothing prevented the defendants to produce any rent receipts or any other revenue record. The plaintiff had been able to prove that he was conferred the ownership right by operation of law. In fact, fulfilled the conditions of occupancy tenant and handing over the possession to a relative, one would not pass on the nature and character to such person of a tenant and therefore, rightly so, the Courts below after appreciating the oral and documentary evidence, much less, provisions of law, decreed the suit.

I do not intend to differ with the same as no illegality and perversity was made out and no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

September 20, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No