

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

Regular Second Appeal No.4237 of 2013 (O&M)

Date of Decision: August 08, 2016.

Jai Singh and others

.....APPELLANT(s).

VERSUS

Government of Haryana and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ram Pal Verma, Advocate
for the appellant (s).

SURINDER GUPTA, J.

CM-11456-C-2013

Heard. There is delay of 126 days in re-filing the appeal.

Learned counsel for the appellants submits that after the objections raised by the registry, he wrote a letter to the appellants for removal of objections but the same was not received by the appellants and due to communication gap, delay of 126 days in re-filing the appeal has occurred, which is not intentional.

In view of submission of learned counsel for the appellants, the application is allowed and delay of 126 days in re-filing the appeal is, hereby, condoned.

RSA-4237-2013

The appellants-plaintiffs have filed this appeal against the

concurrent judgments of the Courts below, dismissing their suit seeking declaration that they are owner in possession of land measuring 12 kanals 8 marlas situated in village Dhoolkot, Tehsil Siwani, District Bhiwani and the entry in the revenue record call for rectification to this effect.

The case of the appellants-plaintiffs, in brief, is that suit land is owned by Jai Singh, plaintiff No.1 to the extent of 2/3 share, plaintiffs No.2 and 3 Manphool and Brij Lal sons of Chandu to the extent of 1/3rd share as per provisions of Section 5 and 8 of Punjab Tenancy Act, 1887 (later referred to as 'the Act of 1887') and Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (later referred to as 'the Act of 1952'). In the revenue record, they are wrongly recorded as 'gair marusi'. The suit land was earlier owned by Muslims, who gave the same to forefathers of plaintiffs to make it cultivable and to pay the amount equal to land revenue. It was also agreed that their children shall not be ejected from the suit land.

The suit of the plaintiffs was contested by the respondents-defendants with the plea that the suit land vested in Custodian Department under Section 4 of the East Punjab Evacuee (Administration of Property) Act 1947 by the operation of law after the migration of its owners, who were Muslims, to Pakistan. This property being evacuee property, was acquired by the Central Government under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the rural evacuee properties were transferred to the State Governments under Package Deal Struck in the year 1961. The plaintiffs have no right, title or interest in the suit land and the provisions of Act of 1952 have no application to the evacuee property.

Learned Civil Judge observed that the appellants-plaintiffs are not covered under Section 5 (2) of the Act of 1887 as they did not fulfil the criteria laid thereunder. It was also observed that the suit land is evacuee property which vests in the respondents-defendants. In para 17 of the judgment, it was observed by learned Civil Judge (Junior Division), Siwani as follows:-

“17. The plaintiffs have admitted the defendant as owners of the suit property which were earlier owned by the Muslims who migrated to Pakistan at the time of partition of the country. The plaintiffs have no right to say that the suit property is not evacuee property vested in the defendants. The plaintiffs have not challenged the ownership of the defendants regarding the suit property in their pleadings. They have no challenged the proceedings declaring the land evacuee by the defendants.”

Not satisfied, the plaintiffs filed first appeal before learned Additional District Judge, Bhiwani which was also dismissed. In para 17 of the judgment, learned Additional District Judge, Bhiwani observed as follows:-

“17. From the aforesaid provisions as well as from the evidence produced by both the parties, it is proved that the suit property is evacuee property and defendants are owners of the suit property. Hence, the plaintiffs have no right to claim their ownership over the land in dispute under Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952 as they failed to produce any revenue record to show their possession is prior to twenty years of commencement of the Act in 1952.”

I have heard learned counsel for the appellants-plaintiffs and have perused the paper book with his assistance.

The appellants-plaintiffs have claimed title over the suit land as per the provisions of Section 5 and 8 of the Act of 1887 having acquired occupancy rights. On appraisal of provisions of Section 5, learned Civil Judge has rightly observed that the appellants-plaintiffs have failed to prove that they have acquired occupancy right and have attained title over suit land.

Section 9 and 10 of the Act of 1952 reads as follows:-

“Section 9: Act not to apply to evacuee property:-

(1) Nothing in this Act shall apply to evacuee property as defined in the Administration of Evacuee Property Act, 1950.

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Section 10: Bar of jurisdiction:-

Save as otherwise expressly provided in this Act every award or order made by the Collector, Commissioner or Financial Commissioner, shall be final and no proceedings or order taken or made under this Act, shall be called in question by any court or before any officer or authority.”

This fact is not disputed that the suit property is evacuee property. Consequently, as per provisions of Section 9 of the Act of 1952, the plaintiffs cannot establish any right, title or interest over the suit property under the provisions of the Act of 1887.

Learned counsel for the appellants-plaintiffs could not point out that the observations made by the Courts below are based on misreading of evidence or any vital piece of evidence has either been over-looked or

misinterpreted, calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

August 08, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

	√
<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
	√
<i>Whether Reportable:</i>	<i>Yes/No</i>