

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

RSA No.4547 of 2013 (O&M)

Date of decision:18.05.2016

Tahir Hussain and another

... Appellants

Vs.

Saddiq and others

... 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.Aditya Jain, Advocate
for the appellants.

AMIT RAWAL J.

C.M.No.12221-C-2013

For the reasons stated in the application, duly supported by an affidavit, delay of 133 days in filing the appeal, is condoned.

C.M. stands disposed of.

C.M.No.12222-C-2013

For the reasons stated in the application, duly supported by an affidavit, delay of 96 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

RSA No.4547 of 2013 (O&M)

Appellant-plaintiffs are aggrieved of the judgment and decree dated 24.12.2010 passed by the trial Court, whereby, the suit

filed on their behalf seeking declaration and permanent injunction has been partly decreed and also the judgment and decree of the Lower Appellate Court, whereby, appeal against the judgment and decree of the trial Court, has been dismissed, vide judgment and decree dated 08.08.2012.

Mr. Aditya Jain, learned counsel appearing on behalf of the appellant-plaintiffs submits that Sh. Abdul Rehman son of Samey Singh, grandfather of the appellant-plaintiffs and respondent-defendants No.2 to 4 and father of Nasir Ahmed and Ayyub was in cultivating possession as tenant *Gair Maroosi Basharah Malkan*, i.e., without paying rent to the owners except the land revenue and rates etc. The suit property measuring 6 kanals 1 marla is situated within the revenue estate of village Ghagas, Sub Tehsil Nagina, Tehsil Ferozepur Jhirka, District Mewat. Abdul Rehman died in the year 1985 and the tenancy rights devolved upon his sons namely, Nasir Ahmed, Ayyub and Bashir Ahmed in equal shares, i.e., 1/3rd share each. Nasir Ahmed purchased 5/6th share of the suit land, vide registered sale deed dated 26.07.1989 from Sh. Mool Chand etc. and after the purchase of 5/6th share of the suit land by Nasir Ahmed, his tenancy rights merged in the ownership rights as he become co-sharer in the suit land and his tenancy rights came to an end. Only Bashir Ahmed and Ayyub were in cultivating possession of the suit land. Bashir Ahmed died on 04.01.2000 and the tenancy rights of Bashir Ahmed devolved upon the appellant-plaintiffs and respondent-

defendants No.2 to 4. Respondent-defendants No.2 and 3 purchased 1/6th share from Ayyub, vide registered sale deed dated 21.06.2004. It has been stated in the plaint that plaintiffs and their predecessors-in-interest have been in continuous cultivating possession of the suit land as tenants for the last more than 50 years and thus, have acquired the right of occupancy in the suit land, thus, claimed declaration and consequential relief of permanent injunction.

Suit was contested by defendant No.1- Saddiq by taking various preliminary objections qua locus standi, maintainability, much less, cause of action and concealment. On merits, it has been stated that Abdul Rehman was never in cultivating possession of the suit land on the alleged rate of rent and revenue entries in the revenue record in favour of Abdul Rehman, if any, are false, wrong and illegal. But the factum of purchase of 5/6th share by Nasir Ahmed from Mool Chand was admitted and the possession for more than 50 years was denied. Defendants No.3 and 4 were proceeded against ex parte.

As per the jamabandi for the year 2003-04, Ex.P1, the column of possession reflects 1/3 share of the appellants and respondents No.2 to 4 as Gair Marusi and 2/3 share of Nasir and Ayyub. Documentary evidence further shows that Abdul Rehman being grandfather was tenant of the suit property and his tenancy rights were inherited by the aforementioned three sons in equal shares, i.e, 1/3rd share each. No evidence has come on record qua surrendering of the tenancy by Abdul Rehman. Both the Courts below

have adopted erroneous approach in not referring to the evidence of PWs and rendered the findings in most capricious and mechanical manner. Number of contentions and points were raised but they have not been dealt with and thus, urges this Court for formulating the substantial question of law for adjudication of the present appeal.

I have heard learned counsel for the appellant-plaintiffs and appraised the judgments and decrees of the Courts below and of the view that findings rendered by both the Courts below do not call for interference, for, appellants have failed to prove on record the essential ingredients of Section 8 of the Punjab Security of Land Tenures Act, 1953, much less, Section 5(2) of the Punjab Tenancy Act, 1887. The appellant-plaintiffs have failed to prove the possession of more than 30 years.

It is settled law that in case, the appellant-plaintiffs are not able to prove the requirements of Section 5(1)(a) and as per provisions of sub-section 2 of Section 5, they have to prove the continuous possession for the period of 30 years, in case, they succeed as it is deemed requirement of provisions of sub clause (a) of sub section (1) of Section 5 of the Punjab Tenancy Act, having failed to do so, cannot claim the declaration of ownership. All these aspects have been noticed by both the Courts below.

For the foregoing reasons, I do not find any illegality and perversity in the impugned judgments and decrees of the the Courts below which are based upon the appreciation of oral and

documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

No ground is made out for interference.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 18, 2016
savita