

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.480 of 2013 (O&M)

Date of Decision: July 5, 2016

Mauj Khan and others

.... Appellants

Vs.

Deen Mohd. and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? yes
2. Whether the judgment should be reported in the Digest? yes

Present: Mr. Amit Jain, Advocate
for the appellants.

Mr. Mukul Aggarwal, Advocate,
for the respondents-caveator.

Amol Rattan Singh, J.

This appeal has been filed by the defendants in a suit filed by the respondents-plaintiffs (hereinafter to be referred as the plaintiffs), on 15.04.2006, seeking a decree of declaration with a consequential relief of permanent injunction against the present appellants (hereinafter to be referred to as the defendants), that the plaintiffs be declared to have become owners of the suit property, by virtue of the provisions of the Punjab Tenancy Act, 1887 and the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, as the plaintiffs were in cultivating

possession of the suit land for more than 60 years, on payment of land revenue and cesses.

It was also contended that the defendants, wrongly and illegally, without notice to the plaintiffs, got an entry of “half batai” entered in the jamabandi for the year 1996-97, allegedly in collusion with the Halqa Patwari.

2. Upon notice issued to them, the defendants (present appellants) appeared and filed their written statement, taking a preliminary objection on maintainability of the suit and further stating that since the plaintiffs are tenants on a half “batai” and the defendants are the landlords on the suit property, the plaintiffs have neither become occupancy tenants, nor owners of the land and in fact, having failed to pay the “batai”, are liable to be ejected from the suit land.

The revenue entry of 'half batai' having been wrongly made in the jamabandi for the year 1996-97, was also denied by the defendants.

3. From the pleadings of the parties, the learned Civil Judge (Senior Division), Nuh, framed the following issues:-

- “1. Whether the plaintiffs have acquired the ownership rights in respect of the suit property and have become occupancy tenants under the Punjab Occupancy Tenants Act as alleged? OPP
2. Whether the plaintiffs are entitled to the relief of injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff has concealed the true and material facts from the court? OPD
6. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD
7. Whether the suit is bad for non-joinder of necessary parties? OPD
8. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
9. Relief.”

4. By way of evidence, the plaintiffs examined plaintiff No.1 Deen Mohd., and tendered jamabandies for the years 1938-39 to 2001-02 (with some omissions in between), as Exs.P1 to P4, P8 to P19 and P25 to P29. They also produced Urdu documents as Exs.P3 and P5, P6 and P7. Further, copies of two khasra girdawaries were produced as Exs.P2 and P31. Copies of various mutations were produced as Ex.P20 to P24 and P30.

The defendants examined defendant No.1 as DW1 and one Chao Khan as DW2 and tendered the jamabandi for the year 2001-02, by way of documentary evidence, as Ex.D1.

5. On appraising the aforesaid evidence, the learned Civil Judge found that though the plaintiffs had shown that they and their predecessors-in-interest were in possession of the suit land for about 60 years, however, according to that Court, the conditions specified in Section 5 of the Act of 1887 were not fulfilled, to the extent that no documentary evidence had been led to prove that rent or cess (even upto the extent of land revenue),

had been paid by the plaintiffs, so as to entitle them to be declared as owners under the aforesaid provision of the Act.

Further, it cited a judgment of the hon'ble Supreme Court in Puran Singh and others Vs. Gram Panchayat and others, (2003) (1) RCR (Civil) 92, wherein it was observed that Section 3 of the Act of 1952 relates to vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords, further referring to the definition of occupancy tenants, as defined in Section 2(f) of the said Act.

Hence, in that case, holding that neither the plaintiffs (appellants before it), nor their predecessors-in-interest, had been shown as occupancy tenants in the revenue records, nor had they obtained rights of such occupancy through a competent court of jurisdiction, the appeal had been dismissed by the Apex Court.

Applying the aforesaid principle, to the suit of the plaintiffs, the learned Civil Judge also dismissed their suit.

6. In the appeal filed before the learned first appellate Court, by the present respondents (plaintiffs), it was pleaded that undoubtedly the plaintiffs had been in cultivating possession of the suit land for more than 60 years and were also shown to have paid land revenue and cesses and as such, the lower Court had erroneously interpreted the evidence to hold that they had not become occupancy tenants.

The issue of the entry of “half batai”, in the jamabandi for the year 1996-97, having been collusively entered, is also seen to have been argued before the lower appellate Court.

The issue of jurisdiction of the Civil Court to entertain a suit pertaining to the Acts of 1887 and 1952, was also referred to and was duly considered by that Court.

7. Having considered the aforesaid arguments, as also the evidence led before the learned Civil Judge, the learned first appellate Court first held that, as regards the jurisdiction of the Civil Court, the lower Court had correctly decided the said issue against the defendants, though on the ground that it was not pressed.

A judgment of a Full Bench of this Court in **Shiv Charan Vs. Financial Commissioner, Haryana and others** (2004) (4) RCR (Civil) 543, was referred to by that Court, in which it was held that after coming into force of the 'Vesting Act', i.e. the Act of 1952, the Civil Court would have jurisdiction to entertain the suit.

8. On merits, the first appellate Court referred to the fact that in all the *jamabandis* from 1938-39 till the 1986-87, i.e. for a period of 48 years, the plaintiffs and their predecessors-in-interest had been shown as tenants “*Gair Marusi*” on payment of land revenue, “*Basreh Malkan Bawaja Darina Kasht*”, and in the *jamabandi* for the year 1991-92, the said column, i.e. column No.9, had been left vacant, despite the earlier entry as noticed hereinabove (having continued for 48 years). Thereafter, in the *jamabandi* 1996-97, though Malkhan, i.e. the father of the plaintiffs, continued to be shown as the cultivator, the entry (in column No.9), was shown to be on “half *Batai*” (*Batai Aadhi*) which continued in the subsequent *jamabandies* also.

However, no reasoning, whatsoever, was given as to how the entry had suddenly been changed, with no copy of any report produced (to show the basis for the change in the column of rent in the *jamabandi* for the year 1996-97).

While referring to a judgment of the Supreme Court in **Durga Vs. Milkhi Ram**, 1969 RLR 122, wherein it was held that in terms of Section 44 of the Punjab Land Revenue Act, the presumption would be in favour of the subsequent entry in the revenue record, unless rebutted, a judgment of this Court in **Parkasho Devi Vs. Tarsem Lal** (2003 (1) PLJ 332, was also cited by the learned lower appellate Court, wherein it was held that if the later entries in the revenue record had come into existent without following the procedure for change in the entries, as per the instructions issued by the Financial Commissioner, then the presumption in favour of those entries stands rebutted.

9. On the basis of the aforesaid reasoning, holding that the plaintiffs had acquired a right of ownership in the suit land and that the judgment in Puran Singhs' case (*supra*) was not applicable, as no right of ownership had been claimed against the *Gram Panchayat*, the dispute being wholly between two private individuals (and not in respect of *Panchayat* lands), the appeal of the plaintiffs was allowed and the suit decreed in their favour, declaring that they had become owners in possession of the suit land; further permanently restraining the defendants (present appellants) from interfering in such peaceful possession.

10. Before this Court, Mr. Amit Jain, learned counsel appearing for

the appellants-defendants (land owners), first submitted that the plaintiffs were not even tenants, having been shown as “Gair Marusi” since 1966-67, in the revenue record (as per Ex.P-8 before the Civil Judge). He referred to a judgment of a co-ordinate Bench, in Jug Lal and others Vs. Raghbir Singh, 2014 (3) RCR (Civil) 559, wherein it was held that the respondent therein, despite being shown as a “*Gair Marusi*”, also had to show that he had been paying rent as a tenant, or that there was any contract to show that he was exempted from paying rent, and in the absence of any such proof, he could not be held to be an occupancy tenant.

He further cited a judgment of a coordinate Bench of this Court in Sukh Ram Vs. Mansa Ram and others, decided on 05.09.2008, in RSA No.3002 of 2007, in this regard.

11. Mr. Jain next submitted that even under Section 5(2) of the Act of 1887, a tenant is required to show proof of payment of rent, which admittedly was not shown, by way of any receipt or by way of any official witness having been produced to prove such payment.

Next, learned counsel submitted that, undoubtedly, from the *jamabandi* for the year 1996-97, till date, payment of half *batai* had been shown by way of rent in column No.9 and as such, that amount being in excess of the land revenue/cesses, the plaintiffs would again, not fall within the ambit of Section 5(2) of the aforesaid Act.

In this regard, he again relied upon the judgment in Sukh Rams' case (*supra*).

He next submitted that even in his testimony, plaintiff Deen

Mohd. had admitted that he had been arrayed as a party in a suit for ejectment. Hence, as per the learned counsel, the plaintiffs could not come within the definition of occupancy tenants.

On the aforesaid arguments, learned counsel submitted that the learned Civil Judge had correctly dismissed the suit of the plaintiffs, whereas the first appellate Court had wholly erred in applying the law applicable to the issue and as such, that judgment needs to be reversed and the suit of the plaintiffs dismissed.

12. At this stage, it may be appropriate to notice that as regards jurisdiction of the Civil Court, both the learned counsel, i.e. for the appellants-defendants and the respondents-plaintiffs, are *ad idem* that jurisdiction was available with the Civil Court to adjudicate upon the suit, as per the ratio of the judgment of the Full Bench of this Court in **Shiv Charans'** case (supra).

13. Mr. Mukul Aggarwal, learned counsel for the respondents-plaintiffs, per contra to the arguments of Mr. Jain, first pointed to the written statement of the defendants, wherein in paragraph 2 thereof, the tenancy itself, of the plaintiffs, was not denied. Only the fact that they were paying rent @ half *batai*, was highlighted.

He, therefore, submitted that the tenancy itself having been admitted, the plaintiffs were very much entitled to occupancy rights in terms of Section 5(2) of the Act of 1887 and that the contention that a “*Gair Marusi*”, without paying rent cannot claim occupancy rights under the aforesaid provision, is wholly fallacious.

He further pointed to the judgment of the lower appellate Court, wherein it was found that from 1938-39 to 1986-87, the plaintiffs had been shown to be tenants “*Gair Marusi*” on payment of land revenue, having been put into cultivating possession by the owners, “*Basreh Malkan Bawaja Darina Kasht*”.

Coming to the entry of half “*Batai*” of the crop as rent, learned counsel pointed to the reasoning given by the learned Additional District Judge, to the effect that a change in a revenue entry not based on procedure laid down for making such change, is to be ignored.

In this regard, learned counsel also relied upon the judgment of the Supreme Court in **Durgas'** case (supra), which had been referred to by the learned Additional District Judge.

Consequently, learned counsel for the respondents-plaintiffs prayed for dismissal of the appeal.

14. Learned counsel for the appellants, in rebuttal submitted that once the respondents (plaintiffs) are shown to have not been paying any rent at all, in column No.9 of the *Jamabandi*, and admittedly are shown to be in possession of the suit land as “*Basreh Malkan Bawajah Darina Kast*”, it means that they were in possession under the aegis of the owner of the land, simply shown to be 'Gair Marusi', which would not confer the status of a tenant on them.

15. Having heard learned counsel for the parties and having considered the judgments of the learned Courts below, first of all, the statutory provisions on the basis of which the respondents-plaintiffs had

based their claim for declaration of ownership of the suit property, need to be referred to.

Thus, Sections 5, 6 and 8 of the Punjab Tenancy Act, 1887, are reproduced herein under:-

“5. Tenants having right of occupancy.- A tenant-

(a) who at the commencement of this Act has, for more than two generations in the male line of descent through a grandfather 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 expense of, the founder.

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefor 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 denotes also relationship by adoption, including therein the customary appointment of any heir and relationship, by the usage of a religious community.

6. Right of occupancy of other tenants recorded as having the right before passing of Punjab Tenancy Act, 1868.- A tenant recorded in a record of rights sanctioned by the State Government before the twenty-first day of October, 1868,

as a tenant having a right of occupancy in land which he has continuously occupied from the time of the preparation of that record, shall be deemed to have a right of occupancy in that land unless the contrary has been established by a decree of a competent Court in a suit instituted before the passing of this Act.

7. XXX XXX XXX

8. **Establishment of right of occupancy on grounds other than those expressly stated in Act.**-Nothing in the foregoing sections of this Chapter shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in those Sections.

Section 9 of the Act of 1887 also needs to be referred to:-

“9. Right of occupancy not to be acquired by mere lapse of time. No tenant shall acquire a right of occupancy by mere lapse of time. ”

Sections 2(d), (f) and Section 3 of the **Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953**, are reproduced hereinunder:-

“2.(d) “land”, “land revenue” and 'rent' have the meanings respectively assigned to them in the Punjab Tenancy Act, 1887 (Punjab Act XVI of 1887);

XXX XXX XXX

(f) “occupancy tenant” means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant.

3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords.- Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day-

(a) all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

(b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;

(c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of the land;

(d) the occupancy tenant shall be liable to pay and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act.”

16. Thus, as per Section 5(2) of the Act of 1887, a tenant who has shown himself to be in continuous occupation of land for 30 years, paying no rent beyond amount of land revenue and the cesses chargeable thereupon, would be deemed to have fulfilled the conditions of Section 5(1) (a) of Act and would have acquired rights of occupancy under the Act. By section 9 thereof, no tenant would be deemed to have acquired a right of occupancy, only by lapse of time.

In other words, even if a tenant proves himself to be in the possession of same land for 30 years, he has to prove that he has paid no rent beyond the amount of land revenue and the rates and cesses chargeable thereupon, for the said period.

The question, therefore, is that as to whether the contention of learned counsel for the appellants is correct, that firstly, since 1996-97, the respondents-plaintiffs having been shown to be paying half “*batai*”, i.e. half the produce of the land, as rent, can they be deemed to have lost the right of occupancy at the time when the suit was filed, on 15.04.2006?

Secondly, *de hors* the above, can the other contention of learned counsel be accepted, to the effect that with no receipt of any rent paid, could the respondents still be deemed to have paid rent equivalent to the land revenue and cesses etc.?

Thirdly, whether a person shown to be in “Gair Marusi” cultivating possession, can be taken to be a tenant who is not entitled to occupancy rights as contended by counsel for the appellants?

17. Thus, the substantial question of law that arise in the present appeal, are:-

i) Whether the entries in the revenue record, i.e. the record of rights (*jamabandi*) are to be accepted *per se*, or whether in terms of the provisions of Section 37 of the Punjab Land Revenue Act, 1882 they are to be ignored, as regards the *jamabandies* from the year 1996-97 onwards; and whether, as regards the *jamabandies* from the year 1938-39, the factum of land revenue having been paid, as reflected in those *jamabandies*, is to be

accepted without further proof of receipts having been produced by way of evidence?

ii) As to whether a person shown to be in cultivating possession of land, as a “Gair Marusi”, is entitled to be declared to be an occupancy tenant in terms of Section 5 (2) of the Punjab Tenancy Act, 1887 and for ownership to vest in him, consequently, in terms of Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952?

iii) Whether, as held by the learned Civil Judge, the plaintiffs had not acquired occupancy rights, in terms of Section 2(f) of the Act of 1952.

18. Taking the second question first, as applied in the present context, as that goes to the root of the matter, i.e. as to whether the respondents, as Gair Marusis can even be considered eligible, in view of the revenue entries from 1938 to 1986, to have set up a case to come within the ambit of Section 5 of the Act of 1887.

The learned lower appellate Court, upon a perusal of the evidence, i.e. jamabandies for the said period of 1938 to 1986-87, found that the plaintiffs had been tenants paying land revenue.

A perusal of the said jamabandies, led in evidence before the Courts below, (photocopies of which have been produced in Court by the learned counsel, not opposed by the other learned counsel), obviously bears out that finding of fact. A perusal of the said jamabandies shows that in Columns No.9 and 11 thereof, other than payment of Re.1 and 97 paise as “*Maal*” and Re.1 and 8 paise as “*Savai*”, nothing more had been paid by the

respondents-plaintiffs.

Having been shown to be “Gair Marusi”, cultivating by permission of the land owners, the revenue entry would in effect translate to be that the plaintiffs were paying land revenue as shown above.

The term “*Gair Marusi*”, though loosely always translated into a tenant at will over a period of time, actually simply refers to a right that is not inherited, with the term “*Maurusi/Marusi*” meaning inherited, and “Gair” negating 'inherited'.

(Reference: “A glossary of Judicial and Revenue Terms” by H.H. Wilson, 2014 Reprint).

Thus, when applied to tenants, it means a tenant who is not one by inheritance. In the present case, therefore, one who has been given such right by the land owners, “*Basreh Malkan Bawajah Darina Kasht.*”

Though the term “Darina” is not defined in the aforesaid publication, nor in other dictionaries of revenue terms as are available, and even learned counsel for the parties could not explain the term, in the opinion of this Court, it eventually makes no difference because the appellants-defendants having admitted the tenancy of the plaintiffs, in the written statement itself, as pointed out by learned counsel for the respondent-plaintiffs, whether such tenancy was inherited by conferment of such right by the landlords, or simply continued to be passed on from the previous generation to the next, by default, would not affect the application of Section 5(2) of the Act of 1887, once it is shown that the plaintiffs continued in such possession, without payment of any rent to the landlords,

beyond the land revenue and cesses, etc., for a period of 30 years.

19. As regards the judgments of this Court, cited by learned counsel for the appellants, i.e. in Jug Lal's case and Sukh Ram's case (supra), Jug Lal's case was not dealing with, in any manner, a right under the Tenancy Act of 1887 or the Vesting Act of 1952. It was an appeal in which the plaintiffs had claimed possession of land which came to their share after partition, with the defendants taking a two fold plea; firstly, that they are all co-sharers in the suit land and the partition was not to the knowledge of the defendants and secondly, that in any case they, i.e. the defendants, were tenants "Gair Marusi", and had not forcibly occupied the suit land.

In that context, a co-ordinate Bench of this Court held that firstly, partition was duly proved between the co-sharers and secondly, with no rent having been shown to be paid by the defendants, they could not be even give the status of tenants at will.

Obviously, the facts of the present case are wholly different, inasmuch as the basic criterion for a tenant to claim occupancy rights under the Act of 1887, is that he should not be paying any more rent than the land revenue and cesses, etc. In other words, no actual rent should have been paid to the landlord, over and above the land revenue and cesses. Hence, if the ratio of what was held in Jug Lal's case, despite the context in which it was so held, is applied to any case under the Acts of 1887 and 1952, no tenant would be able to claim occupancy rights, thereby rendering Section 5 of the Act of 1887 virtually otiose.

Such an interpretation, naturally cannot be given, in the opinion of this Court, when a case is brought by tenants seeking occupancy rights on the basis of the criteria laid down in the aforesaid Acts.

20. Coming to Sukh Ram's case (*supra*), undoubtedly that was a case in which occupancy rights were claimed, but it was held therein, as a matter of fact, while referring to Section 5 of the Act of 1887, that the person claiming to be an occupancy tenant, could not show either that he was a tenant for more than two generations in the male line, for more than 20 years, and also could not show that he had continuously occupied the land from the time of preparation of the revenue record, in terms of Section 6 of that Act.

It was also held, as a matter of fact, that it could not be shown that nominal rent equal to cess charged by the government, was what was paid by the tenant. Hence, the appeal of the tenant was dismissed by the Co-ordinate Bench.

In the present case, as already seen, the lower Appellate Court came to a finding of fact, that nothing beyond the land revenue and cess was paid by the respondents-plaintiffs, for a period of more than 30 years, even as per the revenue record, (other than what was shown from 1996-97 onwards, which in any case has been held hereinabove also, to be invalid entries in the revenue record), which finding has been upheld hereinabove by this Court, as no perversity whatsoever, has been shown from a reading of the record.

21. Coming then to the second part of the first question, i.e. as to

whether the plaintiffs could be accepted to have paid land revenue and cesses, despite the fact that no receipts in that regard were produced by way of evidence.

Mr. Jains' contention on this issue has to be rejected, in view of the fact that the jamabandies (records of rights) having duly reflected, in the column meant for that purpose, i.e. column No.9, that land revenue was paid to the extent of Re.1 and 97 paise, a presumption lies in favour of the correctness of such entries, unless rebutted, in terms of Section 44 of the Punjab Land Revenue Act, 1887. The onus to rebut the correctness of those entries, from 1938-39 till 1986-87, was upon the defendants, which they did not discharge.

This issue of the presumption being rebutted, would be discussed in detail further ahead, in favour of the plaintiffs, while discussing the other argument of Mr. Jain, that the “half batai” having been shown to be paid, in the jamabandies, in column No.9, from 1996-97 onwards, the plaintiffs would have no right of occupancy, as such payment of “half batai”, would be obviously beyond simple payment of land revenue and cesses. Mr. Jain, in this context, had submitted that there is a presumption in favour of the entries, though in the context of the entries from 1938 to 1986, he argued that revenue receipts were needed to be shown, despite the entries showing land revenue to have been paid.

It will be seen further, that even though the presumption in favour of the entries is being now accepted, with regard to land revenue having been paid from 1938-39 to 1986-87, the presumption stands

rebutted, in favour of the plaintiffs, as regards the entries from 1996-97 onwards.

22. Thus, on a perusal of the *jamabandies* produced, and the entries made therein, I find no error in the learned first appellate Court having arrived at a conclusion that the plaintiffs were actually in possession of the suit property from 1938 to 1986-87 at least, simply on payment of land revenue, with no additional payment of rent to the appellants-land owners.

23. Coming next then, to the conclusion drawn by that Court with regard to the entries from 1996-97 being without any basis and thus, to be ignored.

In this regard, firstly, Section 37 of the Punjab Land Revenue Act, 1887, needs to be referred to, which is reproduced as follows:-

“37. Restrictions on variations of entries in records.-

Entries in records-of-rights or in annual records, except entries made in annual records by Patwaris under clause (a) of Section 35 with respect to undisputed acquisitions of interest referred to in that Section, shall not be varied in subsequent records otherwise than by-

(a) making entries in accordance with facts proved or admitted to have occurred;

(b) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties;

(c) making new maps where it is necessary to

make them.”

Thus, with variations in entries being permissible only upon agreement to such variations by all parties interested, obviously, the first requirement of such an entry having been made by such agreement, would have been in the form of a notice issued to the affected party, i.e. the plaintiffs, and even presuming that such notice was issued, thereafter their consent recorded, to such change in entry, was necessary.

The procedure to be followed for making corrections in the records-of-rights (*jamabandies*) is further provided in Chapter 7 of the Punjab Land Records Manual, which is a set of instructions last issued on 02.09.1929, as Standing Order 9 by the Financial Commissioner, Revenue, Punjab.

In other words, it is a set of instructions governing various procedures to be followed for giving furtherance to the objectives of the Punjab Land Revenue Act, 1887.

Paragraph 7.5 of Chapter 7 in the Manual, lays down that entries in Column No.9 to 12 in the Register of Mutations (with column no. 12 thereof dealing with the revenue/rent), should correspond in every case, to the order passed upon the mutation in question.

Paragraph 7.28 further lays down cases where no mutations are necessary.

Specifically, it is stated therein that the “*jamabandies* entries concerning holdings in which mutations have occurred, on which no orders

have been passed will remain unaltered.”

It further lays down that the only entry in the *jamabandies* for the variation of which, in subsequent records, no mutation need be entered in the registers, in relation to column No.9, is where there are undisputed entries relating to rents of tenants at will and entries made in pursuance of an order passed under Section 27 of the Tenancy Act.

(Section 27 of the Tenancy Act (Act of 1887) refers to adjustment of rents expressed in terms of land revenue).

Thus, the aforesaid procedure of making a mutation entry, upon an order sanctioned, not having been shown in the present case, and the entries in any case being under dispute and as such there obviously being no consent to a variation in the entry in column No.9, there was a violation of not only the procedure laid down to make such variation, but also of Section 37 of the Act itself. Hence, I see no error in the learned lower appellate Court having come to the conclusion that the presumption of correctness in favour of the subsequent revenue entries, has been successfully rebutted by the plaintiffs. That Court referred to a judgment of the Supreme Court in **Durgas'** case (supra) and thereafter, specifically relied upon a judgment of this Court in **Parkashos'** case (supra).

In Durgas' case, their Lordships agreed with the judgment of a coordinate Bench of this Court, holding therein that when there is no order of the revenue authorities, showing how the change in the revenue entry was made, the presumption in favour of the later entry would stand rebutted and it would be the earlier entry which would be required to be relied upon.

Consequently, the earlier entries showing payment of land revenue by the tenants would be deemed to have continued, with the plaintiffs in possession of the suit land since 1938-39, i.e. for a period of more than 30 years, in terms of Section 52 of the Act of 1887.

24. Coming then to the third question, as regards the observations of the learned Civil Judge, to the effect that the plaintiffs had not acquired occupancy rights, in terms of Section 2(f) of the Act of 1952, I find that observation to be wholly without basis, in view of the fact that Section 2(f), reproduced earlier herein above, defines an occupancy tenant to be a tenant who, either immediately before the commencement of the Act, is recorded as an occupancy tenant in the revenue record, or who after the commencement of the Act, obtains a right of occupancy in respect of the land held by him, whether by agreement with the landlord or through a Court of competent jurisdiction, or otherwise.

To interpret further, as regards a Court of competent jurisdiction, these proceedings itself, starting with the proceedings in the first appeal, would in my opinion, be a pronouncement by a Court of competent jurisdiction and in any case *de hors* the formal pronouncement of the right acquired by the plaintiffs, they had otherwise acquired the right, in terms of Section 5 (1)(a) and (2) of the Act of 1887, thereby entitling them to rights of the land vesting in them, as per Section 3 of the Act of 1952.

25. Consequently, in view of the aforesaid discussion, I am in agreement with Mr. Mukul Aggarwal, learned counsel for the respondents-plaintiffs, that the plaintiffs having been shown to have been in

continuous cultivating possession of the suit land since 1938, with revenue entries duly recording that they were paying nothing beyond land revenue and the rates and cesses thereupon, the entries from 1996-97 onwards, showing that they were paying “*Aadhi Batai*”, were entries which are to be ignored, there being no basis to those entries and therefore, the plaintiffs have established their right to occupancy in the suit land, by virtue of having been in cultivating possession as aforesaid, in terms of Section 5 of the Act of 1887.

Thus, having established their right to occupancy, they also acquired the right of such land vesting in them, in terms of Section 3 of the Act of 1952 (sometimes erroneously referred to as the Act of 1953).

Hence, finding no merit in the appeal, it is dismissed, leaving the parties to bear their own costs.

July 5, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE