

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

**R.S.A No.3045 of 2015(O&M)
Date of decision :07.11.2016**

Jaggo Devi and others

..... Appellants

Versus

M/s Jainwant Properties and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.S.R.Hooda, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 02.03.2015 passed by the learned Additional District Judge, Sonapat, whereby the appeal filed by appellants-plaintiffs against the judgment and decree dated 16.09.2011 passed by the learned Civil Judge (Jr. Division), Sonapat, has been dismissed.

2. Appellants-plaintiffs filed the suit for declaration to the effect that appellants-plaintiffs no. 1 to 5 are owners in possession of 5/6 share and appellants-plaintiffs no. 6 to 10 are owners in possession of 1/6 share of the land measuring 2 kanals detailed and described in the head note of the plaint situated in the revenue estate of village Patla, Tehsil and District Sonapat. They also prayed for the consequential relief of permanent injunction restraining the defendants from interfering in their peaceful possession and from changing the nature of the land from agriculture to commercial/residential or in any manner.

3. As per averments in the plaint, the predecessors of the

appellants-plaintiffs were in cultivating possession of the suit land even prior to the consolidation in the year 1943-44 i.e. for more than two generations. Similarly, predecessors-in-interest of the persons mentioned in para no.2 of the plaint were also in possession of the land. The persons mentioned in para no.2 of the plaint and the father of plaintiffs no. 1 to 5 and grandfather of plaintiffs no. 6 to 10 had become the owner of the land as per the provisions of the Punjab Occupancy Tenants (vesting of proprietary rights) Act, 1953 (for short 'Act of 1953') as they had acquired the status of the occupancy tenants as per Section 5 of the Punjab Tenancy Act, 1887 (for short the Tenancy 'Act'). It is further pleaded that later on the aforesaid persons exchanged their land which is reflected in jamabandi for the year 1955. The predecessor-in-interest of the plaintiffs came in possession of the suit land as owners and the persons mentioned in para no.2 of the plaint came in possession of the land comprised of Rect./Killa No. 24//22/2. Defendant no.1 has purchased the suit land along with other land vide registered sale deed dated 18.02.2005 containing the recitals regarding delivery of possession, which is contrary to the spot as the appellants-plaintiffs continues to be in possession of the suit land. Defendant have threatened to dispossess them from the suit land forcibly and illegally. Hence the suit.

4. Defendants contested the suit. Defendant no.1 filed the written statement taking the plea that the plaintiffs have not acquired any right of occupancy tenants or proprietorship over the land in dispute. It is further pleaded that continuity of the alleged tenancy has been broken due to the alleged exchange. Defendant no.1 also denied that plaintiffs

are owner or in cultivating possession of the suit land. The sale deed dated 18.02.2005 has been executed by defendants no. 2 to 7 in its favour and the actual physical possession of the land has been delivered. So, there is no question of dispossessing of the plaintiffs from the suit land as they are not in possession thereof.

5. Defendants no.2 to 7 also contested the suit. They have filed the separate written statement, however, on the similar lines as that of the written statement filed by defendant no.1.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 18.08.2005:-

1. Whether the plaintiffs are the owners in possession of the suit property, entitled to the relief of injunction as prayed for?OPP
2. Whether the plaintiffs are entitled to the relief of declaration as prayed for?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present from nor the plaintiffs have any locus standi to file the same?OPD
4. Relief.

7. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the learned trial Court dismissed the suit of the appellants-plaintiffs vide impugned judgment and decree dated 16.09.2011.

8. Aggrieved with the aforesaid judgment and decree, appellants-plaintiffs preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Sonapat vide impugned judgment and decree dated 02.03.2015. Hence this Regular Second Appeal.

9. I have heard Mr. S.R.Hooda, Advocate, learned counsel for appellants and have carefully gone through the paper book.

10. Initiating the arguments, learned counsel for the appellants contended that the appellants-plaintiffs are in possession of the suit land since long. Prior to the consolidation, the predecessors-in-interest of the plaintiffs were in possession of the land. The numbers were changed in the consolidation. Thereafter, the predecessors-in-interest of the plaintiffs had exchanged their land with the persons mentioned in para no. 2 of the plaint, who were also in possession of the land since long. Thus, he contended that appellants-plaintiffs have become the occupancy tenants as per the provisions of Section 5 of the Tenancy Act and they have become the owner of the suit land by virtue of Section 3 of the Act of 1953. He further contended that the long and continuous possession of the plaintiffs over the suit land is fully supported from the revenue record. So, they are entitled for the declaration as well as the injunction prayed for. He contended that the learned Courts below have wrongly dismissed the suit.

11. I have duly considered the aforesaid contentions.

12. It is an admitted fact that appellants-plaintiffs were not recorded as occupancy tenants in the revenue record at the commencement of the Act of 1953. It is also not the case of the appellants-plaintiffs that they had acquired the occupancy rights by way of agreement. Appellants-plaintiffs are alleging that they had acquired the status of the occupancy tenants under Section 5 (2) of the Tenancy Act on the ground that they are in possession of the land in dispute since long i.e. for more than two generations.

13. In the revenue record, they have been described as *Gair*

Marusi. The entry of *Gair Marusi* will not close them with the status of a tenant much less the occupancy tenant. As per Section 5(2) of the Tenancy Act for being declared as occupancy tenant, the following two conditions have to be fulfilled:-

- (1) Tenant should have been in possession for continuous 30 years in land in dispute.
- (2) Tenant should not have paid rent for land beyond amount of land revenue thereof and the rates and cesses for the time being chargeable thereon.

14. In the instant case, the appellants-plaintiffs have not proved that they have not paid the rent for the land in dispute beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon. So, this basic ingredient to acquire the status of occupancy tenants is completely missing in this case. Mere, long possession cannot confer the rights of the occupancy tenants.

15. The learned First Appellate Court has observed as under:-

“However, the appellants/plaintiffs cannot be evicted or dispossessed from the suit land by the defendants except in due course of law.”

The aforesaid observations clearly safeguards the interest of the appellants with respect to the apprehension regarding forcibly dispossession. Thus, keeping in view my aforesaid discussion, appellants-plaintiffs have failed to prove that they have acquired the proprietary rights qua the land in dispute by virtue of Section 3 of the Act of 1953.

16. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

17. Consequently, no question of law, much less, the substantial

question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 07, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No