

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

RSA-1647-2014 (O&M)

Date of decision: 02.05.2016

Tej Singh and others

...Appellant(s)

Versus

Chajju Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Shiv Kumar, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

Plaintiff-appellants have come in regular second appeal having been non-suited by both the Courts below.

It is the case of the plaintiff-appellants that late Dharam Singh was owner in possession of the suit property. Dharam Singh had a brother, namely, Jee Sukh, who died issueless and after his death, mutation No. 2380 was entered in the name of Dharam Singh, who became the owner in possession of 13 K 12 M of agricultural land as mentioned in para No. 1 of the plaint. After the death of Dharam Singh, the said land was mutated in the names of Chhajju Singh, Tika Ram, Sukh Devi, Ram Kali, Naraini Devi and Smt. Jawatri Devi, vide mutation No. 2381 dated 14.05.1992. It is

further averred that Smt. Jawatri Devi died and mutation was entered in the names of Chhaju Singh, Tika Ram (sons), Smt. Sukh Devi, Ram Kali (daughters) and the sons and daughters of Naraini Devi, namely, Hukan Singh, Tej Singh, Nanak Chand (sons), Ram Pyari and Dallo Devi (daughters). The aforesaid land was acquired by the Haryana Urban Development Authority, Faridabad and plaintiffs and defendants withdrew their respective compensation amount from the Land Acquisition Collector and the Courts, as per their respective shares.

It is further averred that mutation of the land situated in Village Tilori Bangar, Tehsil Ballabhgarh, District Gurgaon, at present District Faridabad, ought to have also been entered in the names of Chhaju Singh and others along with Mutation No. 2381 dated 14.05.1992. It is further averred that defendant-respondent Nos. 1 and 2, in collusion with defendant-respondent No. 5 mutated the land of Village Tilori Bangar, only in the name of Chhaju Singh. The suit property was acquired by Union of India but the same was released by order of Hon'ble the Supreme Court of India. The land in Village Tilori Bangar was not mutated in the names of the legal representatives of Dharam Singh. Defendant-respondent Nos. 1 and 2 withdrew the payment of land compensation given by Government of Haryana without the knowledge and information of the plaintiff-appellants. The

plaintiffs have 1/6th share in the suit property but defendant Nos. 1 and 2 refused to give the shares of compensation to the plaintiffs/appellants which necessitated the filing of the suit.

The defendant-respondents contested and submitted that legal representatives of Dharam Singh, namely, Chhaju and Tika had acquired the *gair marusi* rights from their father Dharam Singh. As per the Punjab Tenancy Act, the females did not have any right to acquire the *gair marusi* rights. Mutation No. 2381 was wrongly mentioned in the name of Naraini. The plaintiff-appellants wrongly received a part of compensation regarding the land situated at Village Ajronda.

After hearing learned counsel for the parties and appreciating the evidence on record, learned trial Court, held that plaintiffs have failed to prove that they are entitled to 1/6th share of compensation amount. It was further held that the plaintiff-appellants have no *locus standi* and cause of action and accordingly, the suit of the plaintiff-appellants was dismissed vide impugned judgment and decree dated 07.05.2012.

Feeling aggrieved, the plaintiff-appellants filed first appeal before the learned first appellate Court which was also dismissed vide impugned judgment and decree dated 03.12.2003, holding that the suit of the plaintiff/appellants is not maintainable in view of Section 59 of the Punjab Tenancy Act.

Still not satisfied, the plaintiff/appellants have approached this Court.

Learned counsel contends that the appellants are the children of Naraini, the daughter of Dharam Singh, who was gair marusi/owner of the land in question. The claim of the appellants is based on Ex. P-11, jamabandi for the years 1955-56, wherein, Dharam Singh has been recorded as the owner of the land in question. On the basis thereof, it is contended that a right of the appellants has accrued on the date, Dharam Singh became the owner. He further states that the cause of action arises on the date when brother of Dharam Singh got the land mutated in their favour in the year 1992.

Learned counsel further submits that there is no limitation for a suit for possession based on inheritance and such a suit cannot be dismissed as time barred. To buttress his arguments, he has placed reliance on a Division Bench judgment of this Court in ***Mohinder Singh (died) and rep. by his LRs. and another Vs. Kashmira Singh, 1985 PLJ 82.*** To the same effect in ***Ganpat and another Vs. Lachhman and others, 2008(4) R.C.R. (Civil) 9.***

I have heard learned counsel for the appellants and perused the case file.

There is no dispute about the proposition of law laid down in the authorities under reference but the ratio of the reported

cases do not apply to the facts of the instant case. Both the Courts below have not suited the plaintiff-appellants on the ground of limitation. The plaintiff-appellants have miserably failed to show that they are having shares in the land comprised in khasra Nos. 207 and 208 of Village Tilori Bangar which admittedly is in the possession of defendant-respondent Nos. 1 and 2, as *gari marusi*.

Section 59 of the Punjab Tenancy Act reads as follows :-

“1. When a tenant having a right of occupancy in any land dies, the right shall devolve-

(a) on his male lineal descendants, if any, in the male line of descent, and

(b) failing such descendants, on his widow, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom, and

(c) Failing such descendants and widow, on his widowed mother, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom.

(d) failing such descendants and widow, or widowed mother or if the deceased tenant left a widow or widowed mother, then when her interest terminates under clause (b) or (c) of this sub-section, on his male collateral relatives in the male line on descent

from the common ancestor of the deceased tenant and those relatives.

Provided with respect to clause (d) of this sub-section, that the common ancestor occupied the land.

Explanation- For the purpose of clause (d), land obtained in exchange by the deceased tenant or any of his predecessors-in-interest in pursuance of the provisions of sub-section (1) of Section 58-A shall be deemed to have been occupied by the common ancestor if the land given for it in exchange was occupied by him.

(2) As among descendants and collateral relatives claiming under sub-section (1) the right shall, subject to the provisions of that sub-section, devolve as if it were land left by the deceased in the village in which the land subject to the right is situate.

(3) When the widow of a deceased tenant succeeds to a right of occupancy, she shall not transfer the right by sale, gift or mortgage or by sublease for a term exceeding one year.

(4) If the deceased tenant has left no such persons as are mentioned in sub-section (1) on whom, his right of occupancy may devolve under that sub-section, the

right shall be extinguished.”

It is, thus, clear from a bare perusal of Section 59 *ibid*, that the right to succession of occupancy tenant is strictly to the male lineal descendents only and certainly, daughter is not an heir to such tenancy. In the instant case, plaintiff-appellants are sons and daughters of Naraini Devi, who was daughter of deceased Dharam Singh. Both the Courts below have rightly held occupancy rights cannot be devolved to any female member in the family. Moreover, during her lifetime, Naraini Devi, the mother of the plaintiff-appellants, never asserted her right. The acquisition proceedings were initiated in the year 1998. No objection was filed by Naraini Devi, during her lifetime. In view of the fact that Naraini Devi never asserted her right and the fact that the land was in the name of defendant-respondents Nos. 1 and 2, at the time of acquisition, both the Courts below have rightly appreciated the facts and law on the point. This Court neither finds any error in the judgments and decrees of the Courts below, nor any element of question of law, much less substantial, is involved in the present appeal. Hence, the appeal is hereby dismissed. No costs.

02.05.2016

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(JITENDRA CHAUHAN)
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