

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

RSA No.883 of 2015 (O&M)

Date of decision : 01.06.2016

Ram Chander (deceased through LRs) and ors.

...Appellants

Versus

Pehlad (deceased through LRs) 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: Ms. Pratibha Yadav, Advocate for the appellants.

Mr. Munish Gupta, Advocate for respondent Nos.1-A, 1-B, 1-D to 1-G, 2 to 9, 11 to 18, 22 to 26, 31, 32-A, 32-B, 33 to 36, 41, 46 to 48.

AMIT RAWAL, J. (Oral)

CM No.2596-C of 2015

For the reasons stated in the application which is duly supported by an affidavit, LRs of deceased-Ram Chander and Rai Singh as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

The application stands disposed of.

Main Case

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby the suit seeking declaration that the agricultural land

measuring 4 kanals 19 marlas situated in Village Karnawas after coming into force of Punjab Occupancy Tenancy (Vesting of Proprietary Rights) Act, 1952 that they have got the right of occupancy and also for injunction by restraining defendants from forcibly dispossessing and interfering in the possession, has been dismissed by the trial Court, much less, upheld by the lower Appellate Court.

Ms. Pratibha Yadav, learned counsel appearing on behalf of appellants submits that though trial Court accepted the provision of Section 5 of the Punjab Tenancy Act, 1887 but has not even reproduced or read the provisions of Sub-Section 2 of Section 5 of the Act which is enabling provision to Sub-Section 1(a) of Section 5. For the sake of brevity, entire Section 5 of the Punjab Tenancy Act 1887, reads thus:-

“5. *Tenants having right of occupancy* - (1) 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 ceased to be land-owner 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 the 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 therefore 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 had fulfilled the conditions of clause (a) of sub-section (1).

(3) The words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir and relationship, by the usage of a religious community.”

She further submits that it is not necessary that the forefather or two generations have been proved to be possession prior to coming into force of 1887 Act in case documentary evidence showing the continuous possession as tenant without rent, presumption of tenancy is liable to be drawn. This aspect also not been taken into consideration by the lower Appellate Court, thus, appellants have been deprived of the right of first appeal being last court of fact and law and urges this Court for formulation of the following substantial questions of law:-

1. Whether the judgment and decree of the lower Appellate Court being last Court of facts and law suffers from illegality and perversity?
2. Whether the judgment and decree of both the Courts below in not

referring to the provision of Sub-Section 2 of Section 5 is valid in law or not?

Mr. Munish Gupta, learned counsel appearing on behalf of respondent submits that plaintiff has not established the tenancy, therefore, they cannot claimed ownership under the Tenancy Act. There is no illegality and perversity in the judgment rendered by both the Courts below. The predecessors-in-interest of the appellant-plaintiff had earlier filed the suit and same was dismissed wherein they set up the claim of adverse possession, so cannot claim the right of ownership. This fact has also been noticed by both the Courts below and urges this Court for affirming of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that appellant has been prevented to project its case before the First Appellate Court being last Court of fact and law as the trial Court has not referred to the complete provision of Section 5 of 1887 Act, thus, it is fit case where matter should be remanded back to the lower Appellate Court as the umpteen number of documentary evidence stated to have been produced on record and objections from the other side vis-a-vis Tenancy Act.

Courts below in my view should co-jointly read the provision of law as well as documentary evidence, and then arrive at the finding.

In view of what has been observed above, Questions of law as noticed above are answered in favour of appellants-plaintiffs and against respondents-defendants.

Judgment and decree of the lower Appellate Court is set aside.

Appeal stands allowed.

Matter is remitted back to the lower Appellate Court to decide the

appeal afresh.

Keeping in view the observations, parties through their counsel are directed to appear before lower Appellate Court on 15.07.2016.

Lower Appellate Court shall also ensure to effect service upon other necessary respondents in accordance with law.

Till the decision of the dispute, there shall be status-quo qua the property as it exists today.

01.06.2016

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**(AMIT RAWAL)
JUDGE**