

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4962 of 2014(O&M)
Date of Decision:01.12.2016

Babu Ram and othersAppellants
Versus
Lachhman and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amarjit Markan, Advocate with
Mr. R.B. Gupta, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Plaintiffs are in second regular appeal in a suit for declaration and permanent injunction.

[2]. Plaintiffs filed a suit for declaration to the effect that they are owners in possession of the suit land and the revenue record be rectified. Consequential relief of permanent injunction was also sought, restraining the defendants from interfering in the possession of the plaintiffs or in alternative, a decree for declaration to rectify the Chaokta of ½ in the column of rent on the basis of order passed by the Commissioner, Gurgaon on 05.12.2003, which was upheld by the Financial Commissioner, Chandigarh on 01.05.2008.

[3]. Plaintiffs claimed themselves to be *gair morusi* tenant on the suit land under the defendants. Defendants were

recorded as owners in the revenue record. Plaintiffs claimed themselves to be in physical possession of the land in question since the time of their ancestors since 1944-45 onwards. Plaintiffs claimed themselves to be owners as they were recorded to be *gair morusi* tenant since 1944-45 and were not dispossessed. Plaintiffs further claimed that last order of ejectment proceedings was passed on 01.05.2008 by the Financial Commissioner vide which order of Commissioner was upheld. In view of aforesaid orders, it was held that the defendants cannot receive more than 1/3rd of produce towards rent as per provision of Punjab Security of Land Tenure Act. Plaintiffs also claimed that those findings had become final between the parties and the owners could not receive rent from the plaintiffs beyond 1/3rd of the produce and the entries in the revenue record were illegal and were liable to be corrected.

[4]. Plaintiffs further claimed that their possession is continuous and they had asked the defendants to admit their claim and to get the revenue record rectified by showing rent to be 1/3rd and also to declare the plaintiffs as owners in possession of the suit land on the basis of their possession since 1944-45.

[5]. The suit was contested by the defendants. It was asserted by the defendants that similar suit was decided on

10.11.2003 by Sub Judge, Palwal in Civil Suit No.540 of 1994. The appeal filed against the said judgment and decree was also dismissed by the lower Appellate Court on 24.10.2007. It was also pleaded that the plaintiffs were defaulters in making payment of 1/3rd batai to the defendants and had not paid the rent since 2005 despite repeated demands by the defendants. The plea of the plaintiffs having become owners under the tenancy laws was denied altogether. It was denied that there was any agreement between the parties not to eject the plaintiffs by way of any implied consent.

[6]. After framing of issues. Both the parties led evidence. Trial Court dismissed the suit vide judgment and decree dated 27.07.2012. Lower Appellate Court affirmed the same vide judgment and decree dated 10.03.2014. That is how, the present regular second appeal came to be filed.

[7]. I have heard learned counsel for the appellants.

[8]. Appellants sought to argue the appeal on the following substantial questions of Law:-

“(i) Whether the judgments and decrees passed by Ld. Courts below are illegal and perverse and as such are liable to be set aside?

(ii) Whether payment of rent during the pendency of eviction petition for non-payment

of batai amount debars the right to claim ownership as per the provisions of Punjab Security of Land Tenure Act.

(iii) Whether dismissal of the suit qua the main prayer without taking into consideration the alternative paid made therein is illegal?

(iv) Whether in view of given facts and circumstances of the present case, the decision of earlier suit bars the filing of present suit?

(v) Whether the plaintiffs are entitled to relief in view of given facts and circumstances, when they fulfil each and every condition laid under the law?"

[9]. I have considered the arguments raised by the learned counsel for the appellants.

[10]. Plaintiffs have filed the suit on the ground that they have become owners in possession in terms of Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 read with Sections 5 and 8 of the Punjab Occupancy Act, 1887. Plaintiffs claimed that they are in continuous possession over the suit land since the time of their forefathers at a nominal rent. Plaintiff No.1-Babu Ram while appearing as witness i.e. PW 1 has admitted in his cross examination that defendant No.1-Laxman Dass (DW1) had filed a suit for declaration under 'Form C' before the Assistant Collector, 1st Grade in which the

plaintiff had paid an amount of Rs.28,000/-. The plaintiff was to prove that at the time of commencement of this Act, he through his two generations in the male line of descent was in possession of the land for a period of not less than 20 years without paying any rent beyond the amount of land revenue and the rates and cesses for the time being chargeable thereon.

[11]. In view of payment of rent of Rs.28,000/- on the basis of 1/3rd batai, the plaintiff had admitted that the condition of conferment of occupancy rights was not fulfilled. Further, plaintiffs filed a Civil Suit No. 540 of 1994 against the defendants for seeking declaration to the effect that revenue entries were wrong with a consequential relief of permanent injunction. The said suit was dismissed by the trial Court and the same was upheld in appeal as well. Even RSA No.755 of 2008 was also dismissed on 28.08.2009.

[12]. In view of patent facts on record, substantial question No.1 as framed cannot be answered in favour of the plaintiffs. In view of payment of rent by the plaintiffs in terms of ejectment proceedings, they cannot be treated to be tenant without payment of rent except land revenue. Payment of rent even if, made under the orders of the competent Court, debarred the plaintiff from seeking any relief under the Vesting of Proprietary Right, Act, 1952. The rectification of revenue record cannot be

claimed in the absence of any evidence. The status of plaintiffs-appellants was shown to be a *gair morusi* against the payment of rent. Whether Chakota was of $\frac{1}{3}^{\text{rd}}$ or $\frac{1}{2}$ was a question of fact and the same was dependent upon the evidence led by the parties at the time of trial. So far as questions No.1 and 2 are concerned, the same cannot be decided in favour of the appellants in view of aforesaid factual position. Question No.3 was in respect of alternative prayer regarding correction in the amount of Chakota as per provisions of Punjab Security of Land Tenure Act. The present suit was filed for declaration of status of the plaintiffs for being conferred with the ownership in terms of Section 3 of Vesting of Proprietary Right, Act, 1952. No such declaration can be given for the alternative relief in the absence of any evidence. Moreover, wrong entries showing the status of *gair morusi* in terms of their liability to pay certain amount towards rent cannot be ordered to be corrected after lapse of so many years. The prayer was made in alternative to the original prayer and the same in considered opinion of this Court is beyond the scope of consideration as the same was being raked up after huge delay.

[13]. In view of aforesaid, this Court is constrained to entertain any of the legal question as the same are found to be pure questions of facts. Similarly, questions No.4 and 5 are not

questions of law much less substantial questions of law. Filing of previous suit would definitely create bar for filing fresh suit on the same cause of action.

[14]. Having considered the controversy in detail, this Court does not find any substantial question of law on which consideration could have been made by this Court as per Section 5(1) (a) of Punjab Occupancy Act, 1887. A tenant who at the time of commencement of the Act has, for more than two generations in the male line of descent through grand-father or grand-uncle and for a period of not less than 20 years been occupying land paying no rent beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon would be entitled to the relief in question.

[15]. Apparently, it has come on record that the plaintiffs-appellants were paying rent @ 1/3rd batai to the respondents. As per revenue record, the plaintiffs-appellants were tenant over the suit land on payment of 1/3rd batai. In view of aforesaid factual position, even no declaration in respect of alternate prayer could have been granted by the Courts. Even otherwise, the claim made by the plaintiffs was based on disputed facts which could not be substantiated by way of leading any cogent evidence. The evidence led by the appellants was contrary in itself when the plaintiff himself admitted in his cross examination

that he paid an amount of Rs.28,000/- under the orders of Assistant Collector, Ist Grade, Palwal towards 1/3rd batai.

[16]. In view of subsisting status of tenant and landlord, the ingredients of Section 3 of Vesting of Proprietary Right, Act, 1952 and Sections 5 and 8 of Punjab Occupancy Act, 1887 could not be attracted. Finding no substance in the appeal, this appeal is hereby dismissed.

01.12.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No