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

RSA No. 3133 of 2001 (O&M)

Decided on: 28.07.2017

Shivala Vakya Gram Rania

.....Appellant

versus

Municipal Committee

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amarjit Markan, Advocate &
Mr. K.S.Boparai, Advocate
for the appellant.

Mr. Mahavir Sandhu, Advocate
for the respondent.

Rajbir Sehrawat, J.(Oral)

1. This case is heard as a part of a bunch of cases, i.e. RSA No. 2186 of 2007, RSA No. 3133 of 2001, CWP No. 4764 of 2001, CWP No. 4352 of 2001 and CWP No. 5033 of 2001. These cases have been heard together since one of the party i.e Shivala, claiming to be the owner of the land in question in all the cases, is the same in all the above-said cases and the remaining parties are either, admittedly, the tenants under that party or the Municipal Committee who claims its ownership over a part of land; on the ground that it became owner subsequently because it is so recorded in the revenue records.
2. However keeping in view the nature of the proceedings availed by the parties the appeals are being decided separately and the writ petitions are being decided separately.
3. Although cases are being decided separately however it is beneficial to mention some common facts in each of the judgments.
4. Undisputedly the Shivala is a religious institution. This religious institution was

given land measuring 100 *Bigha Pukhta* by the British Government of India vide order dated 08-03-1842; by way of grant in perpetuity. In the year 1954 this land was mutated in the name of Gram Panchayat Rania, (Now in District Sirsa) in the column of ownership but in the column of cultivation Shivala was entered as occupant of land as “Muafidar Bai-Tamam Puran Gir Chela Nand Gir”. Since on the basis of this change of entry the status of the Shivala as owner was sought to be disputed, therefore, The Shivala filed a civil suit against Gram Panchayat Rania for the declaration of its status as “Pattedar Doami” (Perpetual Lessee). The suit filed by Shivala was decreed on 29-10-1964 and this decree attained finality. Vide this decree, the Shivala was declared as “Pattedar Doami” (Perpetual Lessee) over the entire land (Measuring 97 Bighas Pukhta – as it measured on the date of filing the suit).

5. In the meantime the Consolidation proceedings took place in the village. During the Consolidation the entire land measuring 97 Bigha Pukhta (291 *Bigha Kacha*) was converted into land measuring 471 Kanal 18 Marla. This fact is not disputed by either party. Hence, the present proceedings relate to, in total, the land measuring 471 Kanal 18 Marlas, although individual cases involve different parcels of land out of this total land.

6. In the meantime, The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952 had come into being. Under this Act, the tenants who were having long possession and were not paying any rent beyond the land Revenue were declared to be owners of the land on which they were the tenants. Since, the Shivala was declared to be perpetual lessee over the entire land and it was not required to pay even the land revenue being *Muafidar*, besides not paying any rent to anybody, therefore, on the basis of the above-said decree dated 29-10-1964, the Shivala moved an application before the revenue authorities for entering its name as

owner of the land in question under Sections 3 to 5 of the above-said Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952. Accordingly the revenue authorities entered Mutation No. 3614 sanctioned on 08-03-1967; entering the Shivala as the owner of the land and all the private parties in the present proceedings were recorded as tenants under the Shivala.

7. However, although the above-said decree dated 29-10-1964 was regarding the entire land measuring 471 Kanal 18 Marlas and the status of this entire land was also the same, however, while entering the aforesaid mutation of ownership; the Shivala was recorded as owner only qua the land measuring 376 Kanal 16 Marlas. Resultantly, the land measuring 95 Kanal 2 Marlas remained recorded under the ownership of the Gram Panchayat. No reason is discernible from the record as to why this land measuring 95 Kanal 2 Marlas was not mutated in the name of Shivala when the remaining entire land was mutated in its name.
8. Feeling aggrieved by the incomplete mutation of ownership by revenue authorities, the Shivala filed another Civil Suit for further declaration that entry regarding 95 Kanal 2 Marla in the name of Gram Panchayat was wrong and was liable to be corrected in favour of Shivala. The suit was decreed on 30-08-1968 and a direction was issued to correct the entries in Jamabandis by entering the name of Shivala in place of the Gram Panchayat in the column of ownership regarding this land measuring 95 Kanal 2 Marlas as well. This decree attained finality as none of the parties challenged it in appeal. Mutation of this land was also entered in the name of the Shivala on 25-05-1970. However this Mutation was also entered as 'Pattedar Doami' instead of absolute owner.
9. Despite above-said decree and mutation in favour of the Shivala, the revenue authorities, while preparing Jamabandi of the land in question in the year 1972-73 entered the name of Gram Panchayat Rania in the column of ownership and the

Shivala was entered in the column of cultivation.

10. On the basis of these entries the Gram Panchayat Rania filed an eviction application under Section 7 of the Punjab Village Common Lands Act 1961 against the Shivala. However, that application was dismissed by the Assistant Collector I Grade vide order dated 15-12-1992.

11. Thereafter, the area of Gram Panchayat Rania was converted to Municipal Committee Rania. Hence Municipal Committee Rania again filed eviction petition against Shivala under Sections 4, 5 and 7 of the Haryana Public Premises Act 1972. Some of the private parties in the present bunch of cases had also filed such petitions against Shivala. These petitions filed by Municipal Committee Rania and also others were dismissed by Collector Ellenabad vide order dated 12-05-1994. The appeal filed by Municipal Committee Rania was also dismissed by the Commissioner on 14-12-1994.

12. Therefore, feeling constrained by repeated harassing proceedings against it, the Shivala filed Civil Suit No. 19-C dated 26-03-1996 challenging all the revenue entries in favour of the Gram Panchayat since 1969-70 till-date; regarding the abovesaid land measuring 95K-2M and claimed their Corrections. That suit was dismissed on the ground of limitation. The Shivala preferred appeal against this dismissal of its suit. That Civil Appeal No. 114 of 1999 was also dismissed by lower appellate court vide the judgment and decree date 04-05-2001. Hence the **RSA No. 3133 of 2001** has been filed by the Shivala.

13. Since the Shivala had also filed eviction petitions before revenue authorities against the tenants sitting on the other lands regarding which it had been entered as the owner, therefore, one **Ramjas** filed another Civil Suit No. 295 dated 31-05-1996 against the Shivala to the effect that he was in possession of land measuring 87K-7M (This is the land other than 95K-2M abovesaid) mentioned in

the plaintiff for long time and the decree dated 29-10-1964 had declared the Shivala only as a Pattedar Doami and not the owner and that the mutation dated 08-03-1967 was wrongly entered showing it to be owner and that the Shivala had no right to get the plaintiff evicted by moving the authorities in Form K-1 under Punjab Security of Land Tenures Act. The Trial Court dismissed the suit on 29-07-2003 holding that the Shivala has been rightly entered as owner of the land in the impugned mutation since the Shivala had all the attributes of an owner. The plaintiff in that suit challenged the decision of the trial court in appeal before the Additional District Judge, Sirsa. The lower Appellate Court allowed the appeal on 16-05-2007 holding that the Shivala was held to be a Pattedar Doami and not an owner by the decree dated 29-10-1964. Therefore, the mutation dated 08-03-1967 and subsequent revenue entries showing the Shivala to be the owner are wrong. To challenge this judgment and decree of the Additional District Judge, Sirsa the **Shivala** has filed the **RSA No. 2186 of 2007**.

14. In the meantime, as stated above, the Shivala filed application for eviction against abovesaid Ramjas son of Purkha on Form-K-1 (as provided under Section 9 of Punjab Security of Land Tenures Act). That application was allowed on 14-10-1997 and the eviction order was passed against Ramjas, by the Assistant Collector. These persons filed appeal challenging the order of Assistant Collector but the same was also dismissed by the Collector on 10-11-1998. In these proceedings the further Revision of these persons was dismissed by Commissioner on 10-05-2000 and the ROR was dismissed by the Financial Commissioner on 13-01-2001. So the **CWP No. 4352 of 2001** had been filed by above-said **Ramjas** Challenging the order of the revenue authorities ordering their eviction from the land of Shivala. After his death his legal representatives i.e., Devi Lal etc. are continuing that Civil Writ Petition.

15.Lachhman Singh etc. had also filed Civil Suit No. 561-C dated 24-10-1996 against Shivala for declaration that the Shivala was not the owner of the land measuring 97K-2M which was under their possession and that the mutation dated 08-03-1967 on the basis of the decree dated 29-10-1964 (the first decree obtained by the Shivala) and the subsequent entries showing the Shivala as owner in the revenue records are wrong and that Shivala had no right to seek any ejectment proceedings against them. This suit was dismissed on 30-09-2002. The said Lachhman Singh etc. filed Civil Appeal No. 90 dated 12-11-2002 before the District Judge. However the same was also dismissed on 11-01-2005. Lachhman Singh etc. preferred **RSA No. 1023 of 2008**. However, even that RSA has been dismissed by this Court on 11-11-2009.

16.In the meantime, the Shivala had filed application for ejectment against Lachhman Singh etc., on Form-K-1 (as provided under Section 9 of Punjab Security of Land Tenures Act). That application was allowed on 14-10-1997 and the eviction order was passed against Lachhman Singh etc., by the Assistant Collector. These persons filed appeal challenging the order of Assistant Collector but the same was also dismissed by the Collector on 10-11-1998. In these proceedings, further Revision of these persons was dismissed by Commissioner on 10-05-2000 and the ROR was dismissed by the Financial Commissioner on 13-01-2001. So the **CWP No. 4764 of 2001** has been filed by **Lachhman Singh etc.** challenging the order of the revenue authorities ordering their eviction from the land of Shivala.

17.Similar ejectment proceedings were filed by the Shivala against **Ram Karan etc.** regarding land measuring 95K-2M and these proceedings ended against Ram Karan etc. in the same manner as against other abovesaid tenants. So they have filed similar **CWP No. 5033 of 2001**. However they never filed Civil Suit

Challenging ownership of Shivala like other persons.

18. One more fact needs to be noticed that in the meantime the writ petitioners had moved the revenue authorities claiming that the land with the Shivala was Surplus Land and it be declared as such. Since the Shivala was not a religious institution, therefore it could not claim exemption from the Surplus Law. On these proceedings, the learned Commissioner, Hissar passed the final order dated 14-02-2005 holding the Shivala to be a religious institution and held that the land with Shivala was not surplus land and that the Shivala; as an owner; was entitled to hold the entire land.

19. In view of the above-said factual perspective the respective cases are to be considered. Since in appeals, the decrees would be required to be passed, therefore the Regular Second Appeals shall be taken taken up separately. The Writ Petitions involve the same points to be considered by this court, therefore, the Writ Petitions shall be taken up collectively.

RSA No. 3133 of 2001

1. As mentioned above, this appeal arises from the concurrent findings against the Shivala; in the proceedings initiated by the Shivala through its Mahant Dutt Gir, in the Civil Suit No. 19-C dated 26-03-1996; which was filed by the Shivala for challenging all the revenue entries in the favour of Gram Panchayat, regarding the land measuring 95K-2M, since 1969-70 till date and claimed their corrections on the basis of the earlier decree in its favour. That suit was dismissed on the ground of limitation. The Shivala preferred appeal against this dismissal of its suit. That Civil Appeal No. 114 of 1999 was also dismissed by lower appellate court vide the judgment and decree date 04-05-2001. Hence the present appeal has been filed by the Shivala.

2. The facts as involved in this case are that the plaintiff pleaded that the plaintiff

Shivala is owner in possession of the land measuring 471 Kanal 18 Marla situated in village Rania, Tehsil Rania District Sirsa vide the Jamabandi for the year 1992-93. Out of this, land measuring 95K-2M is comprised in Khewat No. 5771, Khatauni No. 7722, and the land measuring 376K-16M is comprised in Khewat No. 5873 and Khatauni No. 7739 to 7742. Out of the total land 471K-18M, the concerned revenue authorities wrongly entered the Gram Panchayat Rania in the column of ownership in respect of the suit land measuring 95K-2M in the Jamabandi for the year 1967-68. However, regarding the remaining land of 376 K-16M, the plaintiff Shivala was rightly shown to be the owner and recorded as such in the column of ownership in the Jamabandi for the year 1967-68. Aggrieved of the wrong entries the plaintiff Shivala had filed Civil Suit No. 451 on 29-04-1968 This suit of the plaintiff was decreed by the civil court on 30-08-1968 and accordingly the mutation No. 4445 was sanctioned on 25-05-1970 in the name of the plaintiff as owner in the revenue record in respect of the suit land measuring 95 Kanal 2 Marla. However, the revenue record authorities; while preparing Jamabandi for the year 1972-73 again entered the Gram Panchayat in the column of the ownership regarding the suit land and the plaintiff was entered in the column of cultivation in the Jamabandi for the year 1972-73. Therefore, the entries of the revenue records regarding suit land; since the year 1969-70 till date are wrong; to the extent; these entries show the Gram Panchayat as owner in the column of ownership. The entries are arbitrary and without any basis. Thus, the plaintiff is not bound by such wrong, bogus, and baseless entries in the revenue records regarding the ownership of the suit land and plaintiff is entitled to get corrected the wrong entries in the revenue record. It was further pleaded that the Gram Panchayat of the village Rania filed an ejectment application against the plaintiff regarding the suit land under Section 7 of the Punjab Village Common

lands Act 1961; which was ultimately dismissed on 15-12-1992 by the Assistant Collector 1st Grade Sirsa. Moreover even the defendant had filed an eviction application against the plaintiff on 11-03-1993 in respect of the suit land; under section 4, 5 and 7 of Haryana Public Premises Act 1972. But ultimately this eviction petition filed by the defendant was also dismissed by the Collector Ellenabad on 12-05-1994. In view of the above findings by the revenue authorities; the Gram Panchayat Rania or its successor-in-interest, that is, the defendant Municipal Committee has got no interest, title or any concern with the suit land.

3. It was further pleaded that in the year 1842, the Government of India by way of grant gave the land measuring 97 Bighas 17 Marlas to the plaintiff comprised in Khasra No. 749 Min (27-14), 749 Min (12-0), 749 Min (29-0), 749 Min/654 (23-13), 646(0-16) etc. situated in village Rania and in lieu of the old Khasra numbers mentioned above; the land measuring 471 Kanal 18 Marla was allotted to the plaintiff during the consolidation proceedings, which took place in the year about 1962-63. It was further pleaded that the plaintiff Shivala was till date the *Muafidar* in the revenue record and in this way, the plaintiff is the owner in possession of the land and therefore the plaintiff is entitled to get the entries of the revenue record corrected in its favour from the year 1969-70 till date. As such a declaration was sought by the Plaintiff Shivala.
4. On notice, defendant filed the written statement and contested the suit on the ground that though the plaintiff is in possession of the suit property, however, the plaintiff has nothing to do with the ownership of the suit land. The defendant Municipal Committee is the owner of the suit land. Therefore it is rightly recorded as such in the revenue records. Other averments of the plaint were also denied.

5. Parties led their evidence.

6. After hearing the parties the Trial Court dismissed the suit filed by the plaintiff.

The Trial Court held that since the entries challenged were of the year 1972-73; therefore, the present suit has been filed beyond the limitation period of 3 years. Since the suit is not filed within 3 years, therefore cause of action has ceased to survive for the plaintiff. So the suit was dismissed because of non-survival of the cause of action - and not being barred by limitation. Still further the trial court ordered that since under Section 52 of the Haryana Municipal Act 1973 (hereinafter referred as the Municipal Act) notice was required to be served upon the defendant before filing the suit, and that has not been served upon the defendant, therefore the suit was not maintainable. Still further, the Trial Court held that since the cause of action did not survive, therefore the plaintiff also did not have the locus standi to file the suit. However, so far as the merits of the case are concerned, the trial court held that since the cause of action has not been proved to be surviving, therefore, the ownership of the plaintiff is not proved. However, it was held by the trial court that the continuous possession of the plaintiff over the suit land is duly proved.

7. Aggrieved against this judgment and decree passed by the Trial Court, the plaintiff preferred an appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal by affirming the findings recorded by the trial Court. The lower Appellate Court affirmed the findings of the Trial Court. Rather it went a step ahead and held the suit filed by the plaintiff to be barred by limitation. So what the Trial Court tried to do indirectly, the lower Appellate Court did the same thing directly. Still further it was held that since prior notice was not given to the defendant; as required under the Haryana Haryana Municipal Act; before filing the suit, therefore, the suit was not

maintainable.

8. While arguing the case, learned counsel for the appellant has submitted that both the courts below have gone wrong in law. No issue regarding limitation was framed by the courts below. In the present case, the limitation was an intricate mixed issue of facts and law because of series of litigation between the parties and various orders passed by the Courts and the statutory authorities. Without framing a specific issue on limitation and confronting the plaintiff and the defendant with the same; the suit of the plaintiff could not have been dismissed on the ground of limitation. Realizing this, the trial court did not dismiss the suit filed by the plaintiff on the basis of limitation. Rather the trial court resorted to a circuitous method and wrongly held that because of not filing the suit within time the cause of action has ceased to survive. Hence, the suit is liable to be dismissed. It is his further contention that this approach of the trial court; to find out the survival of cause of action; is totally alien to law because, even if proved, the limitation bars only the remedy and not the right or the cause of action. Still further, it is argued by him that, the lower appellate court has wrongly dismissed the suit on the ground of limitation. It is his submission that the approach adopted by courts is totally illegal. Still further it is submitted by the learned counsel for the appellant/plaintiff that there is no limitation for suit for declaration of title, as such. So far as the challenge to the revenue entries is concerned, it is submitted by the counsel for the appellant that the suit is very much within limitation and thus maintainable qua the entries relating to, at least, the last 3 years. Therefore, the suit of the plaintiff, at least, qua the declaration of entries of the last 3 years to be the illegal, could not have been dismissed by the courts below. It is further submitted that in the present suit no order or action of the Municipal authorities passed under Municipal Act was under challenge. So there was no requirement of

issuing advance notice to the defendant Municipal Committee. Moreover the Municipal Committee was totally alive to the dispute because the suit was filed only after the Municipal Committee had failed in its attempt to evict the plaintiff in an application filed by it under Public Premises Act.

9. So far as the merits of the case are concerned, it is submitted by the counsel for the appellant, that since the plaintiff was recorded as a perpetual lessee, therefore, under Occupancy Tenants (Vesting of Proprietary Rights) Act 1952 plaintiff got the ownership rights and same was duly and legally entered by the relevant authorities in favour of the plaintiff. Hence, the ownership of the land stood vested in the plaintiff by operation of law. Any subsequent entries made by the authorities do not have any basis to support these entries. Hence such entries carried no legal value. The ownership of the plaintiff cannot be deemed to be abolished or snatched away by baseless entries made by the revenue authorities in the name of Gram Panchayat. The counsel relied upon the judgment of this court in **1981 PLJ 447**, titled as ***Baba Badri Dass Versus Sh. Dharma and others*** and **2009(1) RCR (Civil) 208** titled as ***Jodh Singh and another versus Smt. Shanti Bai*** to contend that the perpetual lessee, as the plaintiff is recorded in the present case; becomes the owner of the property. Hence the counsel submits that the suit of the plaintiffs should have been decreed by the Courts below.

10. On the other hand, the learned counsel for the respondent submits that suit filed by the plaintiff was time-barred. Since the entries under challenge in this suit pertained to the year 1972-73 also, therefore, the suit was required to be filed within 3 years. Since the plaintiff did not file the suit within the above-said period of limitation, therefore, the suit has rightly been dismissed by the lower courts. The counsel further submits that the defendant has rightly been entered as owner of the land in the revenue records.

11. Having heard the learned Counsel for the parties and perusing the record of the case with their able assistance, this Court is of considered opinion that the submissions made by the counsel for the appellant deserved to be accepted. The Courts below have avoided giving finding regarding the issue of ownership of the appellant/plaintiff despite the fact that there was a specific issue framed on it in the suit. The suit upto appeal has been dismissed only on the point of limitation. Even the findings on the issue of limitation as to the challenge to the revenue entries are not sustainable.

12. The trial court did not frame any issue on the point of limitation. There can be a case where the limitation is only an issue of law and in that case, the Court is required to consider the plea of limitation at any stage. However, in case where the limitation is mixed question of facts and law, the court has to frame an issue and give an opportunity to the parties concerned to lead the evidence on that aspect. Only thereafter and after appreciating the evidence led by the parties, the Court can record a finding regarding the limitation applicable in the case. The parties never raised this issue as an 'issue of fact' in this suit. Therefore, Courts below should not have gone into this aspect. Realizing this only the trial court, instead of dismissing the suit on limitation, had adopted another method, of saying that the cause of action did not survive to the plaintiff because of expiry of the period of limitation. Therefore the suit was dismissed for non-availability of cause of action to the plaintiff and not on the basis of limitation. It has to be kept in mind that availability of cause of action and bar of suit for expiry of limitation are altogether two different aspects. The cause of action emerges from violation of right. And law of limitation does not abolish a right, it only bars a remedy. So despite expiry of limitation the cause of action shall still survive but the forum for redressal for that cause of action may not be available anymore. However, the

lower appellate court probably realized this mistake of the trial court and went a step ahead and straightway held the suit to be time-barred, although there was no issue framed and no evidence led on the file in this regard.

13. In the present case, there have been several rounds of litigation before several authorities including the civil courts. In those proceedings the plaintiff was held to be owner and the defendant was held as not entitled to the suit land, by the court, by the revenue authorities and by the other public authorities. So which party had right to the suit land to justify what revenue entries and which entries were required to be challenged as threat to that right and when; and which entries were irrelevant due to various orders, are all the questions dependent upon so many facts required to be proved by the respective parties. Hence, the issue of the limitation in the present case would have been an intricately mixed question of facts and law. The question of limitation in this case is not a pure issue of law. Hence, the question of limitation was required to be raised and substantiated by the defendant by claiming an issue on this point and by leading the requisite and relevant evidence on the issue. Hence, both the courts have gone wrong in law in perversely dismissing the suit of the plaintiff only on the ground of limitation; indirectly and directly, without there being any issue on limitation between the parties in the present suit.

14. Otherwise also, in the suit, the plaintiff has challenged the entries wrongly entered in revenue record upto the date of filing of the suit, besides claiming declaration as owner of the suit land. To the extent of declaration of title the suit was not time barred by any means. The challenge to the entries in revenue records was upto the last entry at the time of the filing of the suit. So, the suit was well within the limitation; at least qua the revenue entries entered in the last three years; prior to the filing of the suit. Hence, the Court could not have dismissed the

suit on limitation qua the challenge to the entries pertaining to the period of three years prior to the filing of the suit. Needless to say that the plaintiff was well within its legal right to challenge even the last revenue entry of which he felt aggrieved. The claim of the plaintiff is based on title. There is no limitation prescribed for asserting the title. It continues, *ipso facto*, with a person throughout his life, unless he relinquishes or is divested of the same by anyone of the legally recognized modes of transfer of title. The cause of action, in case of title arises only when there is a threat to title. Mere revenue entry is not a threat to title. Hence, there would be no limitation for challenging a revenue entry; unless it is accompanied by a threat to title. A revenue entry, by itself, does not confer or abolishes a title upon any body. It is at the best a purported record of rights which are acquired, elsewhere, through the recognized mode of transfer of title, like Sale, Gift, Release, Will, Decree of Court and Inheritance and by Operation of some Rights Vesting Law. Unless one of these modes of transfer is claimed by other side for having acquired the title, there is no legal threat to the title of the original owner. Hence, any such revenue entry which does not claim to have a valid mode of transfer of title as its basis - is legally irrelevant against original owner. In case of such irrelevant entries, for a true owner, the limitation does not start running from the date of first entry. If continued; such entry can be challenged by true owner at any time. He can challenge even the last entry in the series of such entries. Hence his suit cannot be dismissed simply because the first such entry against him was recorded beyond the period of limitation. Findings by the Courts below in this regard are liable to be reversed.

15. The lower Appellate Court has also gone wrong in law in holding the suit filed by the appellant to be not maintainable because of not serving the notice upon the respondent under Section 52 of the Haryana Municipal Act 1973. In this suit was

only qua the action of the revenue authorities or qua the title of the plaintiff, *per se*. Any action of the Municipal Committee or any order passed by any officer/official of the Municipal Committee was not under challenge in this suit. Hence there was no requirement of serving any notice upon the respondent Municipal Committee. Therefore the finding recorded by the Lower Appellate Court in this regard is liable to be reverse.

16. The claim of the plaintiff qua the ownership over the suit property also deserves to be accepted. Admittedly and as proved on record, the appellant 'Shivala' is recorded as a 'Perpetual Tenant' in the revenue records without payment of any rent to anybody. It is not liable even to pay the land revenue being 'Muafidar Bai Tamam' under the Grant of the land in its favour. Under section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952, a 'Perpetual Tenant' becomes the owner by operation of the statute. A Division Bench of this Court has held in the case reported as **1981 PLJ 447** titled as ***Baba Badri Dass Versus Sh. Dharma and others*** that a 'Perpetual Tenant' partakes the characters of an Occupancy Tenant. It is held in this case that the concept of 'Perpetual Tenant' has become non-existent with coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952. This Act came as an agrarian reform to remove the intermediaries. Hence a 'Perpetual Tenant' is made and becomes owners of the land on which he is a perpetual tenant. This judgment was further followed by a Single Bench of this Court in case of **2009(1) RCR (Civil) 208** titled as ***Jodh Singh and another versus Smt. Shanti Bai*** where it was held that under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952 a 'Perpetual Tenant' automatically becomes owner of the land by operation of law. Under Rule 72-A of the Punjab Land Revenue Rules the Revenue authorities are under duty to enter the name of such tenant in the

revenue record as owner. Hence the appellant / plaintiff ‘Shivala’ is entitled to be declared as the owners of the suit land. Hence this declaration is granted in its favour. However it is clarified that the declaration of ownership is granted in favour of ‘Shivala’ i.e. the deity only and not in favour of any Mahant, through whom the suit had been filed.

17. Another reason for the appellant to be declared as an owner is that this court has already upheld the claim of ownership of the appellant ‘Shivala’ regarding the land received under the same Grant in the same capacity, in ***RSA No. 1023 of 2008, Lachhman Singh and another versus Shivala Vakya Gram Rania and others***, decided on 11-11-2009. This decision has already attained finality since it has not been challenged by anybody.

18. No other argument was raised by the Ld. Counsels for the parties.

19. In view of the above circumstances, the judgments and decrees passed by the courts below are set aside. The suit filed by the appellant ‘Shivala’ is ordered to be decreed.

28th July, 2017

shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes